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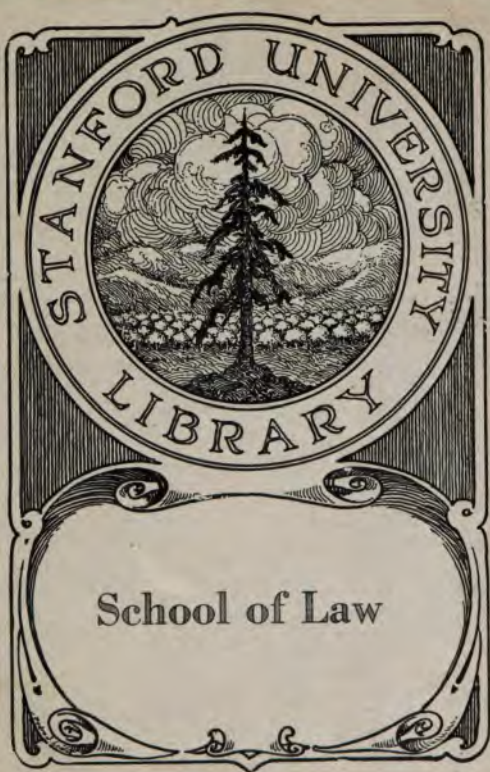
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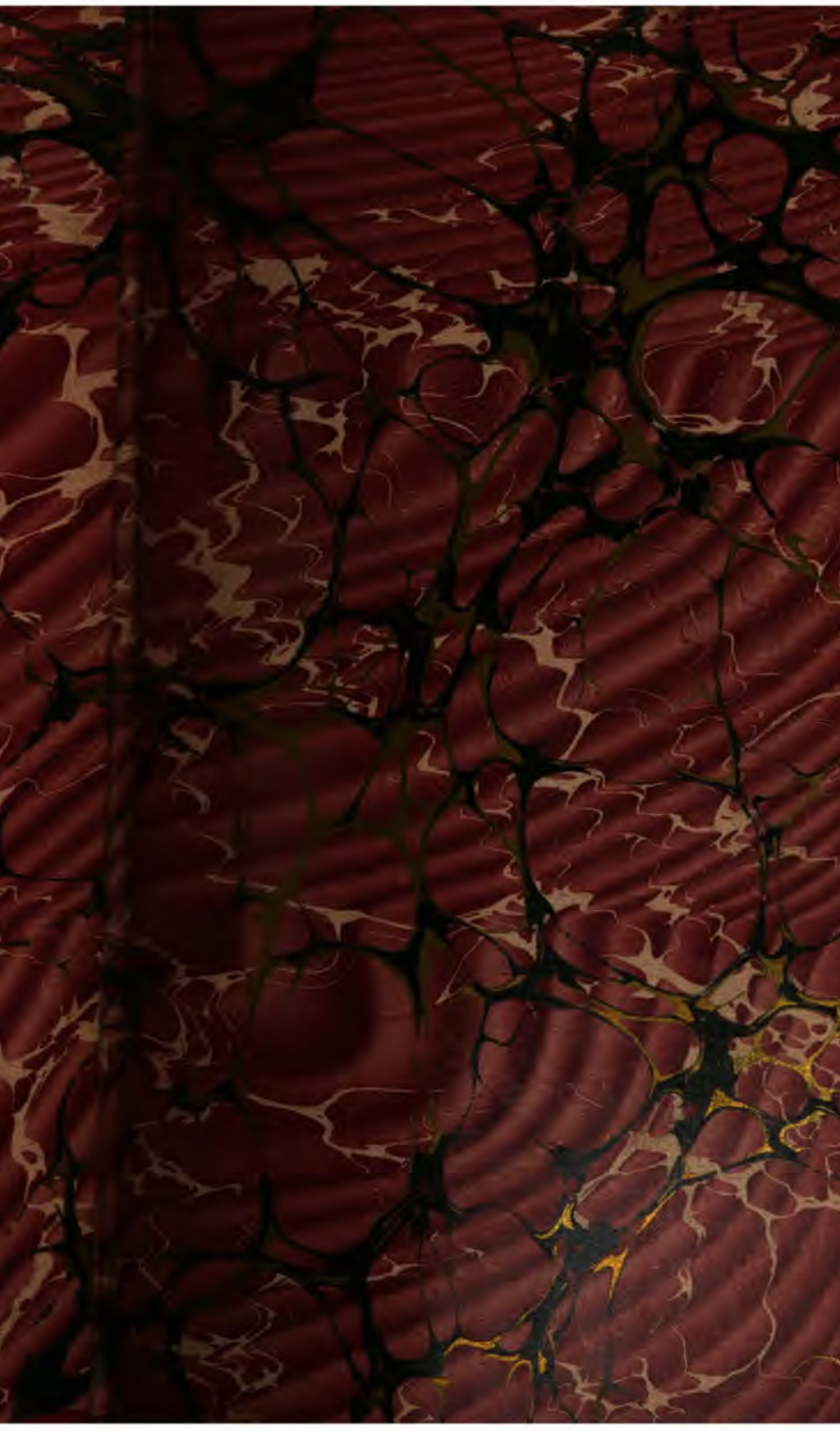
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JSN
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THE
C O U R T
O F
R E Q U E S T S.



C O U R T S
O F
R E Q U E S T S :

T H E I R

NATURE, UTILITY, AND POWERS DESCRIBED,

W I T H

A VARIETY OF CASES,
DETERMINED IN THAT OF BIRMINGHAM.

By W. HUTTON, F.A.S.S.

Stafford Library

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УНАДНА.1 ОНОМАТ2

T H E

P R E F A C E.

A COURT of Conscience is a court of rectitude; its name intimates perfection. There can be no flaw in the institution; if there is any, it must be in the practice, for perfection is not with man.

The utility of such a Court is obvious: every plan is beneficial upon which is drawn the exact line of justice, and which re-possesses a man of the property he has lost, particularly, if upon easy terms to him who sustains the loss, and him who caused it. Whatever scheme can be adopted to terminate quarrels, which often originate from trifles, and rise to consequence; to prevent a series of ill-blood, and introduce

concord, carries its own worth. It need not be recommended, it will recommend itself. It only need be known, to be valued.

One should be surprized at first view, that so excellent an institution has made so small a progress in two hundred and fifty years; for there are but few, since its first rise under Wolsey. I could give an ample reason for this sluggish advance; but even truth itself must not always be spoken. What fire can kindle repeatedly dashed with cold water?

One principal reason of this publication is to describe the nature, powers, and practice of the Court at Birmingham, to which I have often been solicited; perhaps more causes pass through this Court than any
under

under the British government. If practice makes perfect, it has not been wanting.

A man cannot bestow a close application to any science for fifteen years, without acquiring some knowledge of the subject. In many of these years I have not omitted attendance for one day. It gives me more pleasure, perhaps more pride, to tell the world, I never received the least emolument, than if I had privately drawn an ample fortune. If a man works for nothing, it is a proof he likes the work; if he likes it, no wonder he becomes a proficient: no musician ever played a good fiddle, who did not love music. A powerful relish in the mind for any undertaking, will in some measure supply the defect of capacity. I have longed for Friday, as the school-boy for Christmas; nay, the practice of years has not worn off the keen edge of desire.

I may be said to have spent a life upon the Bench, which, though without profit, carried its own reward; for I have considered the suitors as my children, and when any of this vast family looked up to me for peace and justice, I have distributed both with pleasure.

A long preface is needless, because fifty will be found in the course of the work, chiefly tending to elucidate the subject.

I think it a peculiar happiness that I never had the least disagreement with a brother Commissioner. Concord is generally found *upon* the Bench, how seldom soever she may be found off. Perhaps I have not succeeded so happily with the suitors. The loser is often hurt. I always considered myself bound to assign my reasons, why a decision should go against him. Those rea-

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sons usually satisfied, and the loser has often become my friend; but in some few instances, I shall never be pardoned. A Commissioner ought to be the friend of both parties, though they are not both his. The hand of power should ever be gentle. I can safely aver, I never acted against any man with design. If I pronounced wrongfully, it arose from ignorance; revenge, and a party spirit, are beneath a man. I wished to avoid even the first operations of partiality, that subtle power, frequently unobserved, which adheres as closely to the mind, as the hand to the body, and, like that, is apt to appear in action.

I have described various cases for information, each a distinct history; some of them are curious, others, too intricate for human wisdom to decide with certainty, which powerfully pleads in favour of the Bench; every

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P R E F A C E.

every one of them, with fifty thousand more, passed under my own eye. Whether they were equitably determined, must be left to the judgment of the world. Many of them will be remembered by the spectators, and particularly by the parties concerned. Here the loser, who never pardons a lost cause, may see the reasons why he lost it:

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E R R A T A.

Page	2,	line	4,	for <i>and</i> read <i>with</i> .
—	98,	—	2,	for <i>though</i> read <i>thought</i> .
—	124,	—	20,	after <i>it</i> insert <i>at</i> .
—	196,	—	4,	for <i>question</i> read <i>quest</i> .
—	220,	—	15,	dele the word <i>pound</i> .
—	249,	—	13,	for <i>retrograde</i> read <i>retrograde</i> .
—	316,	—	15,	after <i>sold</i> insert the word <i>it</i> .
—	338,	—	16,	after <i>ninth</i> insert <i>of</i> .
—	341,	—	2,	dele <i>the</i> .

THE
C O U R T
O F
R E Q U E S T S.

THE COURT, &c.

THE world we tread, is furnished with variety of matter, which is more or less valuable, according to the uses to which it can be appropriated. The greater the uses, and the greater their number, the more valuable the matter, and the more it will be sought after. The dirt under our feet is supposed of little value, because of its great plenty, and the few uses to which it can be applied. The extensive woods in the interior parts of America, and the riches beneath the sea, fall under the same description, because of their distance, and the difficulty of procuring
B them.

them. Whatever can be brought into use, comes under the denomination of property, and quickly finds an owner. Property divides itself into two parts, land, and what it affords; and the productions of art, which are innumerable.

Man, in a state of nature, has but few wants, and these are ill supplied. The matter about him, like himself, is uncultivated, and cannot be used. Should he possess a guinea, if he could not carry it to market, it would be of little value; he may be said to starve with money. Hence it follows, that assemblages of people, convert matter into property, and stamp that property with value. They supply by their efforts, the calls of others; and from the returns—their own: and now the man of nature may lay out his guinea to advantage, and satisfy his wants.

Improvement, in bodies of people, follows improvement: the calls of nature being supplied, the man instantly covets another guinea to purchase what he *wishes*; here then we open upon a large field of luxuries.

This property, in ten thousand forms, is coveted by every human being. The grand struggle of life is to grasp it. All have too little. Those
 men. who

who have none, desire it; those who *have*, want more. Some long for it, like John England, to keep it; others, like Beau Bembridge, and Mad Allen, to spend it; and others, like John Westley, to give it away. Should a man, righteous in his own eyes, tell me he is fully satisfied with his present stock, I can only answer him in the words of a celebrated author, "Know thyself." If he desires no addition, he will be apt to diminish what he has. His wishing to *keep*, indicates a wish to *increase*. If he parts with it, would he not gladly supply its place? No man can circumscribe his desires to a shilling; if he can, it must be—*a shilling more*. This desire after property, puts a man upon undue means to obtain it.

It is requisite the farmer himself should be acquainted with the nature, and value of the corn, he exhibits to sale; but as it is impossible he should see all he sells, he disposes of it by sample. This sample, though perhaps rather culled, contains the good, bad, and indifferent, and is supposed a faithful representation of the whole.—It is just as necessary that he who describes the human species, should be acquainted with *their* nature and powers. But as the man, confined to a counter for thirty years, can have seen but few, we may deem him

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unequal to the description; yet, even those few, like the farmer's sample, may contain the good, the bad, and indifferent, and may as justly represent the whole of them.

Mankind divide themselves into three classes. The first, from conscience, and a rectitude of heart, would not appropriate any property to themselves, but what they have a fair title to. No temptation can lead them from the line of justice. They wish to call property their own, but upon such terms only, as no man can dispute. It is a singular pleasure, that in the small sample I exhibit, I know many of this amiable description.

Another class, and by far the most numerous, have not much to do with conscience, yet have a natural honesty about them. The principles of the mind tend towards honour. They seek no occasions to take the property of others; and yet, cannot withstand a temptation. Their circumstances determine their character: if these are easy, the man is generally proof against wrong, can support himself without preying upon others, and passes through life without a blot. But if necessity stares him in the face, the ties of honour are forgotten.

The

COURT OF REQUESTS.

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The third, the degraded class, are such whose lives are a series of mischief. They are distinguished by depredations of plunder, fraud, swindle, &c. founded in idleness, poverty, and baseness of mind, a vile example to the guilty, and a pest to the innocent.

From the above description of that mischievous animal man, it follows, there is much evil about him, and this evil demands a cure. Hence originate all our courts of justice; which stand as scarecrows, to frighten away trespassers; as traps to catch, and punish, offenders. But to punish, is only to perform half the cure; the defrauded person is still defrauded. There is as much necessity to restore what is stolen, as to punish the thief. Nay, Why cannot restitution be part of the infliction? The province, therefore, of a court of equity, is to hear the complaints of the injured; carefully to examine whether those complaints are just, and if they are, to remove them by the gentlest means. It is not so much to punish the delinquent for committing an error, as to give him the chance of repairing it. Unavoidable losses, which occur in many cases, must be fixed as reason directs, and the road to justice made as short, and as even, as prudence can make it. A perfect

description of the greatest tribunal upon earth, is comprized in one short sentence, formed to my hand, "Render to every man his portion in due season."

All the courts of law have been voluminously treated on; every point which could be placed in a judicial light, has been canvassed by many able hands. If we look into the catalogues of the booksellers, we shall be amazed at the prodigious number of law books they contain; statutes, and abridgments of statutes, marshalled in alphabetical order, make a formidable part of those copious volumes. Dry cores that nobody chuses to swallow. Books for shew, as perhaps not one of them has ever been read. Law-books are not worn out by use, but by time; they may be said, like the anti-deluvians, to die of extreme age. But in these vast collections, we shall not find one treatise upon the Court of Requests. No author has ever written a book upon this subject; equity lies dormant as a science without profit. The straight, the easy, the concise road to justice is blocked up, and the traveller is led through the dark, long, and intricate windings of the law. He who willingly enters, meets with repentance;—he who is dragged into them, with pity.

Loud

COURT OF REQUESTS.

Loud complaints have been made against the courts of law, for their procrastination and expence; perhaps with reason. Many a man gives up his property, because he dares not trust it in one of the courts; others, because they cannot bear the expence. He who has no right, has often bullied him who *has*, because he could spend a thousand to his hundred. But whether the wrath of a man, or a bear, kindles against another, his liberty is out of the question; they equally deserve the muzzle. Vicious proceedings may be justly prevented in every animal, whatever name it bears. The mischief of the bear may be checked by the chain; that of the man by the Court of Requests. The language of both is, "thus far he may go but no farther." A man, like Alexander, when stopped in his career, may sit down and weep; but it is happy in both cases, there are bounds they cannot pass.

Though there are characters fond of litigation, yet, we may venture to pronounce, the mind can no more be at peace while engaged in a suit, than fire engaged with water. The fear of losing, far over balances the hope of winning; and if a suit continues three or four years, at what price shall we estimate the loss of peace!

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There is something in the temper of man which cannot bear to be contradicted; two parties in contest, like two bodies in friction, naturally create a warmth; by the violence of both, aided by the interested, the fire may be blown into a flame, to the destruction of both. I once hinted at this practice to a very honest attorney of my acquaintance, who replied with a smile, "If it was not for quarrels, we could not make the jack turn the roast meat."

Two men met on the highway. One, out of bravado, gave the other a lash with his whip; neither of them spoke. The sufferer had sustained no damage, save against his honour; or, to change the word, against his pride. Two lawyers got between them, and an indictment was preferred at Warwick. The jury, of which I was one, were willing to consider the matter as frivolous, and were inclined to throw out the bill. A salute with a whip, it was observed, from a person in liquor, was like a slap on the back from the hand of a farmer, which is no more than the rough stile of "How do you do?" They asked if he had ever given the whipper any affront? Or whether that whipper had ever made any concessions? This not appearing, and the jury considering, that one man had no right to whip another with impunity,

COURT OF REQUESTS.

found the bill, and played *Much ado about nothing*, at Warwick, which would have been better performed in silence, in its own neighbourhood, by a court of equity.

If one man kicks another into a brook at Birmingham, why cannot the affair be terminated without being carried to Warwick? Every information that *can* be had, may be had on the spot; and information is all that is wanted by a bench. Judgment is easy—which is simply this, Never let the punishment exceed the offence.

Nothing is so necessary, in the whole system of English jurisprudence, as a concise method of recovering property, and terminating disputes. This is the great hinge upon which the welfare of a nation turns. The more a people encrease their trade, the more they must venture their property; how necessary is it then, to enact such laws as will best secure that property, and, when in danger, point out the easiest method to recover it. To multiply the Courts of Requests, and enlarge their powers, is the likeliest way to attain this end.

It would be easy to establish one in every manor, or district, so that the whole kingdom might be influenced by this court, as by those above.

It .

It would no longer be objected, that a man may sue by becoming a temporary resident within the verge of the court; and not be sued, by residing without. Let a man be sued where he resides. No evil can arise, be the plaintiff's residence where it will, because the choice of suit is with him. The Commissioners and the defendant are upon the spot.

The judges in this court have common sense, like other men; consequently, are as able to judge. Being residents, they stand a chance to be better informed, which is an advantage not easily attained by a judge at a distance. They are often acquainted with characters, which is another help; but the grand benefit is, they have no emolument; and though every man has his friends, whom he wishes to serve, they cannot well be biassed, for they have characters to save; neither can they have an interest in prolonging a cause.

It will be asked, How must that vast body of men subsist, who draw nourishment from the law, if its sources are dried up? The *prunings* only, of this great body, may be spared, and will make excellent merchants, instructors, tradesmen, &c. and add that wealth to the community, which they now diminish. They will be thankful for intro-

ducing them into a better mode of existence, for some of them starve in this. The people themselves will live more at ease, when their property is secured, and there is a speedy termination of their quarrels,

I know no scheme that would bear a tax better than causes tried in a Court of Requests, nor a tax that would be paid with so much pleasure. It is surprizing that no minister, from Wolsey to Pitt, ever adopted the measure. The finances might be supplied without the budget, the duties on trade discharged, the national debt reduced, and the popularity of the minister saved.

People will naturally flock where they can have justice cheap. A small tax upon every cause would produce an immense sum. If this valuable commodity can be obtained upon easy terms, there will not be one cause less for the tax; smoothen the road to justice, and the traveller will chearfully pay the turnpike.

In our narrow and shackled court at Birmingham, where I have had the pleasure of sitting fifteen years, there are about one hundred and thirty causes a week. If this number is produced
in

in a confined state, what might be expected in a more enlarged? The most insignificant cause, which is finished in ten seconds, would well bear one shilling to Government. The duty might be encreased, according to the nature and importance of the cause, to five pounds, or upwards. Many a cause is carried to Warwick, at the expence of a solemn face, twenty guineas, and an aching heart, which might be determined as well upon the spot, in a few minutes, for half a crown, the tax included. The small loss of time, of peace, and of money, proclaim its utility. The tax is the smallest part of the savings.

It has been remarked, that a Court of Conscience is a court of trifles; but if beneficial, why are not the trifles enlarged; whatever restores peace to a ruffled mind, will not be deemed a trifle. A trifle may break this peace.

“ We quarrel for a pin, a feather.”

but a trifle cannot restore it. I have seen, in this trifling Court, a period put to many thousand quarrelsome disputes, which a court of law might have extended. The Commissioners have made that agreement between contending parties, which they were unable to make themselves.

It

It may be objected, that to multiply this Court would be creating judges in the lower class, taking power out of the hands of professional men, and placing it in those of the ignorant.—But if they are ignorant, it is high time they began to learn; practice will teach them; and, being deprived of emoluments, will keep them honest.—Should blunders arise from their want of knowledge—they cannot commit greater blunders than I have seen in the courts of law. If this Court is able to conduct a cause *under* forty shillings, why not above? The same capacity which can determine one, will the other; the same rule of justice holds good in both. Perhaps the defect is not in the judges, but the laws, or why is it more difficult to recover a debt of nine pounds, than ten? If the two sums of nine and ten are equally a man's right, why are not the methods of recovery equal? Though it may be easier to succeed in one than the other, yet the difficulties in both are unreasonable. The creditor is often so much frightened, that he chuses to lose his property rather than venture; or if he ventures, instead of meeting with his own, may double his loss, though he becomes a winner. He may drag the artful debtor, backed by a more artful attorney, who is bound in conscience to
assist

14. COURT OF REQUESTS.

assist him to be a rogue, and then lurch him, through half the courts in the kingdom; and at last, after great loss of time, peace, and expence, that debtor may elude, and laugh at him. But if a safe and concise method was adopted of terminating right, causes would multiply, the world be more at unity by a speedy conclusion of their quarrels, and the exigencies of Government supplied without a murmur. Then a man, through very anger, could not melt down his own fortune, nor plague his neighbour, by obliging him to melt down his. Instead of a cause lasting forty days, forty causes might be dispatched in one.

“The whole art and mystery of a judge” consists in being master of the subject; decision, as before hinted, is easy. But every disguise is held up to deceive him. False assertions, and false evidences, are played off before him. Every thing is offered but truth. He has no resource, but in his own judgment; and even this, when the parties are artfully on their guard, will sometimes fail him; but deception is not peculiar to this Court. By cross examination, by setting the matter in new lights, he may have the good fortune to throw the deceiver off his guard; then half ideas, covered with half words, mixed with hesitations,

tations, and broken remarks, give him an opening; when, like an industrious general at a siege, he wins his ground inch by inch.

Nor is there any danger, by cross-examination, of injuring the innocent; for when a man is supported by truth, he conveys something decisive and convincing; you may turn him, twist him, toss him, throw him—but, like the dice, he will everlastingly fall upon his own basis.

Another class of causes are equally troublesome to decide upon; where truth and falsehood are blended together. The Commissioners find it very difficult to separate the wheat from the tares. Nor are they, sometimes, better able to judge, though they hear nothing but truth, because they are deceived by hearing only a *part*. This amiable figure is so mutilated, it is not known what it represents, or to whom it belongs. But after all, if they endeavour to be right, they will seldom be much wrong.

The bench use every means to understand a cause before they determine, but when once masters of the case, they close it. This gives the losers occasion to complain, “that the Commissioners will not hear them;” that is, will not hear them

them by the hour. If two contentious people were to be heard as long as they chose to speak, there would not be more than one cause tried in a day.

If through long and blind accounts, want of evidence, contradictory assertions, backed by two obstinate tempers, the Commissioners know not which way to steer a cause, they turn it adrift, to wreck on the wide ocean of the law ; but this very rarely happens, not once in a thousand trials. They rather chuse, as far as they can with safety, to put a period to the contest, by as gentle a decision as the case will bear, to prevent future mischief.

Most of the contested causes which pass this Board, tend to displease the loser ; but if the decision is just, it will stand a scrutiny ; it will be approved by the disinterested, and the anger of the loser will subside.

The highest satisfaction to a Commissioner, is to leave both parties contented. Should this be the case, and it generally may, he is not far from the strictest rules of equity. The means to attain this desirable end are, the reasonableness of his decisions, and the manner of deciding. When a
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man does right, the work carries its own justification; and when he cordially points out to the loser, the necessity of acting against him, it becomes a vindication of himself. Charles the Second was said to have denied a favour with a better grace than King William granted one. If truth would allow, I could gladly reverse the remark, because William's character stands fairer in my esteem, than that of Charles.

I have some where read, that the first act to erect a Court of Requests passed in the reign of Henry the Eighth; consequently, one of our best laws proceeded from the meanest and most dastardly of Parliaments. They were no more than puppets, which acted as Henry directed the wires. This singular privilege was granted to one of the parishes in London; I am sorry I have forgot the name of that place, upon which was darted the first ray of equity; perhaps there was no attorney in the parish, to put in his plea against it. Henry seemed to grasp at opposites, for in his reign were constituted two courts, as contrary to each other as the antipodes—the Court of Requests, and the Star-chamber. One seemed to be descended from above, to still the passions, and administer justice; the other, to rise from the lowest regions of Satan, to produce quarrels, ruffle the mind, and dissolve

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the fortune. Whoever puts an end to a contest, performs a good work ; whoever puts an end to one, without loss to the parties, performs a better. Time has caused this difference between the two courts—that of equity has made very slow advances, during two hundred and fifty years ; but the Star-chamber was overturned in 1643, by a political tempest. The increase of one would be wished by every friend to man ; the abolition of the other would be regretted by none, but those concerned in its profits.

It is extremely difficult to divest ourselves of former habits. That which suited our fathers, is the most suitable for us. Should a farmer, from study and observation, strike out new modes of improvement, he would be hooted, hissed, and laughed at, till he was reduced to the hackneyed level of his neighbours ; and yet it is a maxim universally allowed, that *he* deserves well of his country, who directs the earth to increase her produce. There never was even an act of inclosure without opposition, although the benefits are obvious ; there never was one obtained, but it gave general content, when carried into execution. Every petition to the House of Commons, for an act to establish a Court of Requests, has been objected to, although its utility is as demonstrable

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as the propositions in Euclid ; we cling to former usage, and detest innovation. I am well acquainted with a county town, of commercial importance, which solicited such an act ; a violent opposition started up. It was urged, that the act would thin the country, by driving away its inhabitants, to the detriment of trade ; that their families would become a burden to the parish, and that they would be reduced to distress, by having their small stock of chattels sold up, to satisfy an hungry creditor. But one plain remark, void of all sophistry, will overturn the above arguments, and ten thousand more ; *no man ought to be deprived of his property*. If such a doctrine was allowed, even in a small degree, like wild-fire, it could no where be stopt. The question was warmly debated, both *in* the House of Commons, and *out*, and at length, was lost in both.

Specious reasons are offered, in many cases, while the real ones are artfully concealed : an attorney, who conducted the sheriff's court, and received its emoluments, plainly saw his profits would decay,—should another court arise, that would furnish justice at a cheaper rate.—His own interest made him active, and induced him to stir up that of his friends. With difficulty he

pressed the Corporation into his service, who, with their united weight, pressed down the bill to destruction.

“What mighty matters rise from trivial things !”

The paltry sum of one hundred a year, flowing into the pocket of a private attorney, was able to stop the stream of justice, set twenty thousand people in a flame, lock up the senatorial powers of the nation, keep the door of fraud open, deprive ten thousand persons of the means of recovering their effects, and leave the generations unborn to regret the loss of the bill. Had the House of Commons bestowed a moment's reflection, they would have seen its utility.

If such an act “thins a country,” it is in driving away those, who by living upon others, are better driven than kept. Trespassers must be driven, at one period or another : it follows, expulsion had better take place at the end of little mischiefs, than great. Whoever does not support himself, must lie as a burden upon others, and none can suffer by being rid of a burden. But the experience of thirty-four years, in Birmingham, evinces, that this Court has a contrary effect. The inhabitants have increased more in that short space, than in any whole century, which
proves,

proves, they are not diminished by this Court. There is nothing more common than for a man to labour to discharge a small debt, who would run away from a large one, and this proves it beneficial to trade.

“ If a man annihilates a debt by lying in prison, under an execution, his family may become a burden to the parish ;” but it can only be for a short time : whereas, if he flies his country for a debt, he is never likely to pay, his family may be a long incumbrance. Can that court then be detrimental, which nips an evil in the bud ? Should he draw his family after him, to cheat in other places, the creditor at home is totally cut off. The smaller the debt, or the smaller the sum a creditor will take for his debt, the greater the encouragement to pay it, and the less danger of his fleeing from it. If a man possesses an ample stock of goods, they are not likely to be taken in execution, because he is able to redeem them ; if they are small, it is an inducement to preserve them by labour.

It has been farther urged against the act, “ that people give credit, because it furnishes them with the easy means of recovery.” So much the better ; the means cannot be too easy. But

is not all credit founded on the laws of recovery? Can there be any more evil, then, in pursuing a man, in this gentle Court, for a small sum, than pursuing him in another, for a larger? The only question in both cases is, Has the owner a right to his money? If he has, any doctrine which tends to deprive him, is the most dangerous that can be established, for it would prove a destructive inundation, without bounds. If this concise process is a great benefit to the creditor, it is a greater to the debtor, for it helps him to conveniences, which he could not instantly procure; it supplies him with what his own foresight never could. How often are people relieved in sickness, or stagnation of trade, upon the credit of the Court, who must have starved without it? The consequences of the Court are well known to both, but not much regarded by *one*.

The creditor is often obliged to reduce his debt to the compass of the Court, which shews his attachment to it. This is a benefit to the debtor. I have known a landlord claim 11. 19s. 11d. of a tenant, who owed him twelve guineas, for the rent of a farm he had left, while he knew the tenant was able to pay the whole; but as he knew him to be a rascal, he durst not pursue him in another court. Here the plaintiff had his choice,
either

either to take three shillings in the pound, or throw the debtor into prison for two terms, lose the whole debt, all the expence, and his own peace. The debtor too, gets quit at an easy rate, either by paying two pounds for twelve, or by laying in prison six weeks, instead of half a year. This is an obvious benefit to trade ; the plaintiff has the forty shillings to bring into business, and the defendant four months to labour for himself.

Every man should equally find protection, or punishment, from the laws of his country. The man of property is easier governed than protected ; the lower ranks are easier protected than governed. If a man has possessions, he dares not transgress, for fear of losing them ; but poverty places him above the laws. Our laws are very loose with regard to this class. If a man has nothing at stake but his person, and that person is secure, he may be said to be out of the reach of the laws.

The lesser courts, such as the Hundred, the Peverell, the Piepoudre, &c. extend their powers only to house-keepers, and in them, only to their chattels ; their persons are secure, consequently the prudent poor are the chief people amenable to these courts. Of all the classes of the poor, these

are the least detrimental to society, for by their own good conduct, they have acquired a small property, which has placed them one point above the lowest. It is necessary they should pay their debts, but it is equally necessary every other class should pay theirs. Why should the unmarried, and the inmates, though married, be exempt? He who is not encumbered with a family is excused, and is, of all men, the least excusable. If he has no property to discharge his debts with, his person, his time, his future property, and his abilities, so far as is reasonable, ought to be responsible to the creditor.

When extreme poverty arises from sickness, or a decay of trade, it is only temporary, and will relieve itself. But if this poverty is of long duration, it generally originates from indiscretion; and why should indiscretion be exempt from punishment? To excuse one fault, is an encouragement to another. The Court of Requests then, seems the only one which can reach a man above the laws. Those who dare not pursue an enemy in another court, may succeed in this. This is the only Court which can recover money where there is none, by commanding the future time, and the person of the debtor; and this is another instance of its usefulness to trade.

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The causes that are brought before this Court, are of two kinds, both come under the denomination of debts. The first is disputes, which are innumerable, and difficult to determine. The Commissioner calls forth all the evidence without, and all his ability within, which, though united, are defective. He will often find himself obliged at last to give a random judgment. But in every instance that I remember, even a random judgment has done less mischief than none.

The other kind is debts due from the lower class. These are easy to decide; but when the Commissioner has poverty before him, he must touch it with a gentle hand. If the Creditor ought to have his money, he should have it in such portions as will not distress the other; if he is distressed, let it be by his own imprudence—not by the Court. It would be unpardonable to ruin a family, by forcing large payments, when the debt may be discharged by small, without injury to either. The Bench are often complained of, for ordering low payments, which keeps the plaintiff out of his money. But if this is an error, it is the least of two; for if a quick payment was ordered, it might prove beyond the ability of the debtor, and the creditor might never be paid: whereas, by a little patience, both are suited. The
moment

moment a decision has passed the Commissioners, their power ceases ; if any thing is wrong, it cannot be made right. A judgment is no more than putting the debtor into the hands of the creditor. If he conforms to the order, all is well ; but if he omits any one payment, the creditor can demand all the remaining debt ; and this is a powerful argument in favour of lenity. As the kindest sentiments do not always subsist between the two parties, it would be unfair, wantonly to put one into the hands of the other.

They never order payment in less sums than two shillings a month, because it would multiply accounts, so that they could not easily be kept ; but in very particular cases, they allow two or three months before the first. If a publican entices an imprudent man from his family, to spend the chief of those profits which should support them, and this at unseasonable hours, they have been known to allow twelve months before the first payment.

The power of the Court extends over the manors of Birmingham and Deritend, both the property of the Archer family ; but the manors of Bordestley, and Duddeston, which are part of the place, are exempt.

All services must be performed within the pale of the Court. If a man resides in Bordeſley, and works in Birmingham, he may be ſerved where he works, but that ſervice muſt be perſonal, becauſe it is not his abode ; but if he is maſter of the ſhop, that reaſon ceaſes ; it is conſidered as his home. A perſon complained “ he was ſerved *out* of the “ manor, conſequently the ſervice was null.” The Court replied, if he had ſent that information by another, they muſt have quaſhed the order, but by perſonally bringing it, he cured the defect ; they, therefore, in the laugh of the crowd, entered an order againſt him. In a caſe like this, the only danger is to the body ; the goods are out of the power of an execution.

Should a perſon reſide in the manor of Edgbaſton, and rent a garden in that of Birmingham, he is liable to ſue and be ſued ; but the difficulties are very unequal ; for the man of Birmingham may eaſily be ſerved at his abode ; but the man at Edgbaſton cannot. He may be ſerved if found in the diſtrict, but the ſervice muſt be perſonal. The ſummons cannot be left at his garden, becauſe it is not his abode.

A family retired to Bordeſley, to avoid the Court ; but it appeared that the wife worked in a
shop

shop at Birmingham, she was served with an order at the shop, and as the husband and wife are considered one, the service was deemed good.

A person who resided at Saltley, was sued, "he sought a livelihood in Birmingham;" but although the plaintiff procured an order, he was not able to serve it. He continued the cause several months, at six-pence a week, but could never find the defendant within the limits of the Court; and at last, gave up the pursuit.

Another was an inhabitant of Hales-Owen, but possessed freehold premises in Birmingham. He could not sue for arrears of rent, because he was out of the bounds, but he might constitute a steward, and that steward could sue in his own name.

After an able-bodied race, between a defendant and a beadle, the former got on the south-side of the post which divides Deritend from Bordestley, and the other on the north, and though within a few inches of each other, like Pyramus and Thisbe, they could neither part, nor unite. The defendant defied, and laughed at the poor beadle, while he cursed the enchanted spell, which confined him in the magic circle,

A baker

A baker who resided in the lordship of Duddeston, a few doors beyond the precincts of the Court, brought six causes, which were all dismissed. The Court advised him to rent an apartment in Birmingham, if he wished to shun ruin; this would give him a right to recover his property; for though he *sought a livelihood* according to the words of the act, yet they did not think he came within its meaning; for if this was allowed, a manufacturer would become a resident in London, or Paris, by only selling his buttons; a miller, who brought his flour from Warwick; or a farmer, who sells his cow in the market, might then claim a right of suit.

THE PROCESS.

A Summons is first served upon the defendant, by the beadle of the Court, at the expence of five-pence, in the name of the clerks, to answer the complaint of the plaintiff, at a future time, mentioned in the summons. The Court being assembled, the parties are called by the crier. If they appear, the plaintiff is asked, "What is his demand?" If the defendant acquiesces in that demand, he is charged with a payment equal to his ability. This is the shortest and most simple
cause

cause that can come before the Court, and is as easily determined without a capacity as with one. The trial may last half a minute ; but if a dispute arises between two contentious people, it may continue half an hour, and may require more brains to decide, than the whole bench can muster. The expence, in either case, is the same. I have known one of these intricate causes linger two hours ! What other court would submit to unravel a crooked cause, during so long a space, for six-pence ?

If the defendant does not appear, the plaintiff pays fifteen-pence, which is charged to the other, and the cause is kept open for another hearing, that no person may be taken by surprize. In the interim, an order is sent to the defendant, specifying the sum he is charged with, and the manner of payment ; to which, if he has no objection, he need not appear the next court day, when the cause becomes final. This is the next class of short causes, and are the most numerous, requiring no more brains to determine than the other.

But if the defendant supposes himself injured, he may have a second, or *ex parte* hearing, for six-pence more ; or if either party chuses to postpone

pone the trial to a future day, for evidence, it may be done for the same money. Some of these causes are too difficult for any head to determine.

All services are proved upon oath, because they are of great moment. As the plaintiff frequently knows the obscure situation of the defendant better than the officers of the Court, he chuses to serve the summons and order himself.

If two people are jointly sued, they are considered as one person with regard to the debt, but the expence is double, because two names are called. If only one appears, the charge is the same as if neither, for without all, there may as well be none, as the cause becomes *ex parte*. If two people are sued, and the debt shall be found to belong only to one, the cause must be dismissed, or we involve the innocent with the guilty; they cannot be parted; and that one to whom it belongs, may be afterwards sued.—Brooks sued Earl and Warden. Earl came. The debt was just; but while the Commissioners were examining who ought to discharge it, they were informed that Warden died between the service of the summons and the trial. As, therefore, they could not raise the dead man, they could not
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make an order against him, and as they could no way unite the two, the cause fell.

It is the duty of a Commissioner, and perhaps a pleasure, to adopt every plan, supported by the laws of his country, that will terminate the business of the suitors, with the least trouble, loss of time, and expence. If he throws obstacles in their way, he defeats the intent of the Court, if he removes them, he acts in character.

If a debt was contracted by a partnership, it was long the practice of the Court to sue the parties jointly. One name could not be admitted without the other; they were considered as one man.

This occasioned great difficulties, as, sometimes one could not be found, or he might reside in London, which rendered the service impossible. If one was served, it was considered a service to both; but this wore an unfair aspect; a man might be condemned in an expence, who, by absence, could neither be heard, nor even know he was sued, but might be ignorantly taken in execution, if he should in future, be found in the manor.

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But lately, this troublesome knot was untied, and the suitors set at liberty. The plaintiff can take one, or both of the partners, as suits his purpose. This alteration was founded upon a decision in the Court of Common-Pleas, Nov. 30, 1785.

A body of Lascars (Indian sailors) who had served in the Kent, from the East Indies, sued William Moffat, Esq. the owner, for their wages. The cause being likely to go against him, he pleaded that Messrs. Hunt and Curtis were his partners. But the Court, to their honour, over-ruled the plea, decided for the Lascars, and left the partners to settle the matter among themselves. In this case, the property of the partnership is responsible, but not the person of any, except the man sued.

Nor can the plaintiff suffer by selecting one name, instead of having the whole firm in security, except he should cancel the debt by imprisonment. For should that name in future, while the money is unpaid, be released from the order, by death, or, if a woman, by marriage, he has his remedy against the others. If the debt is not discharged, every partner is responsible till it is. But it must be observed, that one cannot be sued, while the debt is depending with an-

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other, otherwise, a man might recover more than is allowed, for if the partners can be divided, the debt cannot. Should he sue one, and recover, the rest must go free. If A. and B. are partners, and are five pounds indebted to C. he may sue one, or both, but the whole debt, be what it will, must be comprized under forty shillings. If he fixes upon A. gains a verdict, and A. dies when he has paid only a part, he may sue the executors, if A. has left effects, or he may sue B. for the part unpaid, but not more.

If A. sues B. and it shall appear the whole debt is not forty-shillings, and that A. holds a security, or pledge, which B. has deposited in his hands, the Court will not make an order against B. till the pledge is returned. But if the debt exceeds the power of the Court, they will enquire into the value of the pledge, deduct that value from the debt, and give A. the remainder.—B. may owe A. 4*l*. and may have deposited in his hands a piece of furniture of the value of one; the Court will allow A. to keep the deposit, and charge B. with 1*l*. 19*s*. 11*d*. If a dispute arises about the value of the pledge, as there generally does, the Court will easily ascertain that value to the satisfaction of both, and engage A. to keep it a given time, as in case the 37th, during which,

he shall return it to B. paying the fixed sum. This is cheerfully complied with by both, but never performed by B. The hope of prosperity, and the possession of poverty, rarely forsake him.

One man has no right wantonly to sport with the time and property of another. If he sues wrongfully, the Court can fine him in any sum under 10s.—I have never known an instance.

If any person insults a Commissioner upon the Bench, the Court can instantly commit him, and carry him before a justice, who can charge him with a discretionary fine under forty shillings. I have known one instance, in a pert little Jew; we easily reduced his body, but were unable to conquer that diminutive, but unruly member, the tongue.

The parties in contest may bring what evidences they please, but the Court has no powers of compulsion. They are seldom examined upon oath, because an oath is too sacred to be sported with, though it may be had upon easy terms; for if a man asserts a point in open Court, he never refuses to swear it, neither does it throw light upon the subject. They have a right also to em-

ploy counsel, though I have never known an instance; pride on one side, and expence on the other, exclude the black robe. The attornies frequently display their oratorial powers, which are vastly superior to those they display upon parchment; perhaps attention is paid to language which many *bear*, but none to writing, which no one reads. One short remark characterizes the keen-eyed fraternity; they always endeavour to throw us off the basis of equity, and goad us with points of law.

The most concise mode of conducting a trial, is to examine the parties, and their evidences. Principals are more nearly concerned than agents, and truth may be easier found. But one would think the merits of a cause, in a court of law, depended upon words, instead of facts, for he who knows it best, is forbid to speak; his case must pass through the hands of an attorney, who knows it less than himself, and then be exhibited by counsel, who knows it least of all. A cause may be considered a golden fleece, suspended in court, where the most eloquent speaker, like Jason, carries the prize.

DISMISSIONS.

Dismissions arise from various causes, such as false claims ; a cause depending in another court ; or if it has been determined, or fully dismissed in this ; from services wrong performed, or even properly performed, if the persons who serve them neglect to appear and attest them upon oath, from non-age, misnomers, &c.

If the defendant appears, and pleads a misnomer, the Court will rectify the mistake, out of kindness to the suitors. His appearance gives them a power of curing the evil ; but this can only be done in the first hearing, for in the second, or *ex parte*, there is an additional expence, which the defendant has no right to pay, but must fall on the plaintiff, and the cause must be dismissed. If he does not appear, they cannot proceed without doing him injustice, because they pursue a man, and a name, which ought to be joined, but are separate.

No plaintiff will, with design, bring his antagonist in a wrong name, because the loss falls upon himself. If the error is unknown to the Court, their determination will hold good, provided the

right person was served, because the error lies with that person; he ought to have appeared, and pleaded the misnomer; no after plea can avail.

If the misnomer be discovered during the trial, as is often the case, the Court, notwithstanding the absence of the defendant, cannot proceed, because they are not to commit a known error. Some alledge, "The Court may proceed, though they are apprized of the mistake; for if the defendant will not appear and plead it, the fault is his own." But if the defendant commits an error, it will not justify the Court in one. It is their duty to allow him every chance, though he will not allow it himself.

A simple dismissal, is no more than the word *dismissed*, written at the head of the line, in the margin, and is no bar against a future suit.

But if the words *dismissed after full hearing* are entered, it amounts to a determination, and ends the dispute forever. The Commissioners are very cautious of entering these words, because it may prevent a future prosecution of right. I apprehend, a cause once determined, or fully dismissed, in this Court, cannot be brought into any other, inferior to that of the Lords. The Court never
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mark a cause with this unalterable decree, but when they are masters of the subject, and are convinced the dispute ought to end.

I have often remarked, one of these dismissions is generally attended with abuse, and threatening, but upon cool reflection, the parties have been well satisfied. If two men have quarrelled, I see no more reason why they should be suffered to torment each other for life, than a man to drown himself. It is right to prevent both. The mind becomes heated by irritation; there is a pride in conquering, that pride adds fuel, increases the flame, and would itself be hurt by submission.— Assistance from the bench becomes necessary; if they can extinguish the fire, the embers will cool of themselves.

N O N S U I T S.

From the ignorance, or forgetfulness of the suitors, many errors are committed, which are always attended with some expence. If a beadle serves the summons, and the plaintiff should not appear to prosecute his claim, a nonsuit ensues. If a plaintiff neglects to attest the service, the cause having lost its support, drops into a dismissal; but if he neglects to prove the service of the

order, though the Court ought to dismiss the cause, yet out of kindness, they will continue it two or three court-days, at 6d. each, to give him a chance of amending the error. But if the defendant should appear on any of these days, it becomes a nonsuit. I have known a plaintiff nonsuited even in Court, by not attending to his name when called. I have known a defendant inveigle the plaintiff down stairs, to whisper a secret, while he knew the cause would come on, and as the service could be proved by the beadles, he has nonsuited the enemy. I have known one man nonsuited by leaving the Court, only to take in a pint of ale, and another to let one out. As a list of causes hangs up for inspection, in open Court, a man will retreat for an hour, or two, supposing, by the number of his cause, it may come on at such a time. Business may go off quicker than expectation, when, at his return, he has found a string of half a dozen nonsuits to pay for; is laughed at by his competitors for victory, quarrels with every person present, and with himself the most.

F E E S.

The fees of office are complained of as burthensome by all, except him who receives them; and the

the complaint is too often just. Every man ought to be paid for his service, but one man should never have the power to fleece another. Exorbitant fees are a stagnation to business. Whether a court sells justice, or a mercer a suit, if they sell upon easy terms, they will both acquire custom.

The fees of this Court, which are easier than those of any other Court of Requests within my knowledge, are wholly the property of its officers. The Commissioners have all they ought to have—nothing. If fortune has placed a man in easy circumstances, he ought to devote a portion of his time, and his abilities, to the service of his country; she demands it. If he refuses, he does not deserve the name of a good citizen. That service which is performed with willingness, and without pay, is often the best performed. *Service* and *wages*, like two friendly twins were designed to go hand in hand; but *avarice* seizes and carries off the latter, while *service* is left neglected behind. Give an annual stipend, and the work stands a fair chance to be *ill* done, or not done.

The expence arising from the blunders of the suitors, though small, is paid with great reluctance. The mind cannot be satisfied. We always wish
out

our case a *little* better than it is, without considering whether it is, in reality, good or ill. If a friend resides in America, we should be happy if he resided *any where* in England; if a hundred miles of, we wish it was but twenty; we should then gladly compound for ten, but we are unhappy because it is more than one. The man with five hundred a year, could live *mighty well* upon six. Something wrong attends us as closely as our shadow. If the expence of an error in the court was a guinea, we should rejoice if it was but a crown, nay, a shilling would raise our ire, because it exceeds six-pence.

Though the bench may have some power over the fees, yet they are very careful in using it, because those fees are extremely easy, and they consider, they have no right to give away the property of another. They never solicit a remission but in cases of great necessity, which is cheerfully complied with.

One fee, belonging to this institution, has given me some concern. It ought to be paid, but I cannot fix upon the man who should pay it.— Though warranted by the Act, it carries the air of injustice. The moment a person is taken in execution, he is a prisoner to the beadle, and whether

that these two continue together six minutes, or six weeks, five shillings is paid to the beadle whenever they part. It is cruel to charge this payment upon the plaintiff, for by the other's confinement he has already lost his whole debt, and expence ; he would sustain a second injury, instead of finding relief in the first.

It is unjust to charge it upon the prisoner ; he has undergone a punishment equal to the fault. As he has suffered all he ought to suffer, no farther demand can be made. His imprisonment indicates poverty, and to saddle him with the expence, would keep him still a prisoner. Five shillings is a serious thing to him who has none.

Nor can the loss be sustained by the beadle ; he cannot run a hazard in taking the defaulter, nor find materials, pay rent, keep servants, and work gratis. However inequitable, when the defendant discharges the debt by imprisonment, this irksome tax is paid by the plaintiff.

As prisons are designed for public utility, they ought to be the property of the public, be watched over, and paid for, at the public expence. The keeper should be prohibited the tap, spirits, or the sale of whatever the prisoner might do without ;

out ; and in lieu thereof, be supported by a salary. This would prevent imposition, a corruption of morals, and ease the plaintiff of a troublesome burden. But even an evil seldom comes without a good ; for this five shilling levy tends greatly to promote an agreement between the plaintiff and defendant, which keeps the prison thin.

A table of all the fees, except the above, which will scarcely bear the light, is hung up in open Court, and are as follows :

For every summons, to the clerks, 3d.

For the service, to the beadle 2d.

For calling plaintiff, or defendant, clerks 2d.
beadle 1d.

Nonfuit, to the clerks 1s.

For paying money into Court, to the clerks 6d.

For every hearing, to the clerks 3d.

For a copy of every *ex parte* order, and of every judgment of non-fuit to be served, to the clerks 4d.

For the service of every such order, to the beadle 2d.

For every execution, clerks 8d.

To the beadle for levying the same, 1s.

For acknowledging satisfaction in full, clerks 4d.

For every search, to the clerks 2d.

By

By the Court of Conscience act of 1786, prisoners fees were abolished, and with great justice — they were never allowed with us.

P U N I S H M E N T.

Somebody says, perhaps Paul, "If there was no law, there would be no transgression;" that is, if laws are not made, they cannot be broken. But if there was no transgression, there would be no need of law. Man, however, being rather a disorderly animal, it became necessary to circumscribe his actions by the edicts of society. He who keeps near the standard of rectitude, has nothing to do with laws, nor they with him; they were made to bind them who go astray. But punishments, though disagreeable, are the end of law, and give it weight. Law and punishment are as necessary for forming the fabric, as the base, and the capitol. Take away punishment, and law, like the lion in Æsop, when deprived of his claws and his teeth, loses its terror. Punishment is to a broken law, what a blister is to a malady; they are both irksome, but neither can take effect without being applied. The physician attempts to cure the disease with one, and the executioner the crime, with the other. Laws are orders made by the community, for its good govern-

government; but if they are not obeyed, they bring the powers into contempt which make them. Punishment must follow disobedience. To over punish borders upon barbarity, and ought never to be found amongst civilized nations, but to treat them with neglect, saps the foundations of order. Laws cannot enforce themselves.— They are of no force without punishment; every evil calls for both.

The good wives, says an ancient fable, uttered frequent and heavy complaints, that the mice made dreadful depredations on their cheese. A body of wise men, perhaps they were of Gorbham, they could not be the Commissioners of Lamps, for they have adopted more vigorous measures, were assembled to find out a cure for the complaint. They passed an act, strengthened with half the words in the English language, and backed with all the rhetoric of Lincoln's-Inn, that it should be death, without benefit of clergy, for a mouse to eat cheese—still the pantries were robbed, and the law-givers laughed at by the robbers.

A sage cat, armed, and clad in scarlet, who having crept into the senate-house, through a borough, and furnished it with half its wisdom, observed,

observed, while standing erect upon two, "Of
 " what use are your laws, without punishment?
 " You bring yourselves into ridicule. Never
 " make a law, but when requisite; and then, ne-
 " ver fail to enforce it. Its execution consists in
 " power. My hand is necessary to the instru-
 " ment. I command the watchful tribe. Con-
 " stitute me a domestic, and I will not only pro-
 " tect you from foreign enemies, but execute
 " your internal decrees." — The advice was
 pursued, the dairies were saved, and when the
 cheesemonger attempted to take up a cheese, he
 no longer took up a shell.

The execution of justice tempered with mercy,
 is the perfection of government.

If a defendant performs the orders of the Court,
 he is safe; if not, he is liable to punishment;
 which is of two kinds, an execution against his
 body, or goods, at the option of the plaintiff.

If he omits one payment, the execution can
 enter for the whole. If against the body, he
 may be confined forty days; but by an act passed
 in 1786, the time of imprisonment for debts, not
 exceeding twenty shillings, is limited to twenty
 days:

days : as the error was but half the magnitude, it was thought the punishment should be so too. If it is against the goods, as many are sold as will pay the debt, and about six shillings expence; the overplus, if any, is returned to the owner. A bailiff is not wantonly to seize more than are necessary, otherwise he might barbarously sell up the defendant.

If he takes a distress for less than the amount; provided there were sufficient effects; the loss must be his. He cannot enter a second time at the same suit.

If there is not a sufficient distress, he may take what there is ; he has executed his writ ; the loss is the plaintiff's : nor can he recover in future. The full orders of the Court having been executed.

But if an execution issues against the goods, and there are none, the beadle cannot execute the writ ; but the plaintiff, at his own expence, may change it for one against the body.

Or if there are no goods worth taking, the beadle may omit the service, and inform the plaintiff, who may change the writ, if he chuses.

If an execution enters against a man's goods, and it shall appear they are not his, it does not deprive the plaintiff of another against the body, the first being cancelled; for though the first was served, it operated against nothing, therefore is no execution.

If an execution enters against the goods, the landlord may prevent the seizure, provided rent is due, and they are not moved off his premises, but he cannot continue his claim by protecting them; he must immediately relinquish it, or finish it by sale, that the beadle may execute his writ.

If a person enters fairly, by assignment, bill of sale, judgment, &c. he prevents the entry of the beadle, because he had prior possession; but he cannot protect. An execution was issued against B.'s goods; it appeared he had given a bill of sale to his sister, who resided with him, and had constant possession. The protection was deemed fraudulent, and the beadle had a right to execute.

Should a person conceal his effects to prevent execution, the Commissioners can, by the act of 1786, continue him a prisoner one third longer than the usual time. But this is too frivolous to prevent the evil. Neither are his effects likely

COURT OF REQUESTS.

to be discovered, because none but the interested are concerned ; nor can the creditor touch them if they are, because the punishment consists in imprisonment.

If an execution issues against the body, and it cannot be found, it may be cancelled, and another may issue against the goods.

If an order is made against a single woman, and she afterwards marries, an execution cannot operate against her, because it is of no force without the name, and she has lost hers. The plaintiff ought, at the expence of six-pence, to discharge it from the Court books ; but whether he does or not, he may jointly sue the husband and wife. If they neglect payment, he may take them both in execution, or the husband alone, but not the wife.

A man may contend for, or against a point, according as he is swayed by interest. Some have maintained, that an apprentice cannot be committed ; others, that he may.

If the Court have a power to make orders, they have a power to carry them into execution. A greater authority will always controul a less. A
servitude

servitude is no more than a private contract between two people, which must give way to every opposition of a more public and extensive nature. An apprentice is liable to all the criminal and parochial laws. The powers of the Court, being superior to a private contract, will, while they last, suspend it. If being an apprentice, screens a man from his debts, he may easily become an apprentice all his days.

Mason ordered an execution against Hickman. Westwood arrested him for 341. Both the writs were put into the hands of the master of the court prison, who executed both at the same instant. A dispute arose; all the three parties became interested. Westwood saw his money in great danger, should the execution of the Court take effect. Mason knew he should recover his, if the writ could be prevented; for he thought Hickman would never lie in prison forty days, for a few shillings; and Hickman thought, if he could get into prison, at Mason's suit, it would screen him from Westwood's. — However the contending parties might be blinded by interest, the question is plain. The Courts at Westminster being of a higher nature than the Court of Requests, their writs will have a prior effect. The sheriff will take the man wherever he finds him.

Whether Hickman was taken to the prison by the execution, or to the spunging-house by the writ, is of no consequence: the writ once served, he is the sheriff's prisoner. Had the execution of the Court *only* been served, and Hickman committed, the sheriff could not have entered with his writ. But this writ being in the hands of the master of the prison, he alone could execute it, because he could, at any time, enter his own house. The prisoner being taken out of Mason's hands, the execution is still of force; it is only suspended. Mason has his choice to wait a more favourable opportunity, for the service, or change it for one against the goods. The beadle has a right to his fee, though the service is abortive, because the prisoner and he cannot separate without it.

Cases of non-age are more complex. If we attend strictly to law, perhaps an infant, who proves himself under age, cannot be sued. If he could, it follows, he may be sued at any age; for the law has not drawn a line between one year old, and twenty-one. The lad might be served with a process, while he is sporting in stilts, or flying his kite; nay, the cradle might be in danger of an attack. On the other hand, if an infant is not liable to pay his debts, much mischief would

would ensue; the innocent would, by the designing, be deprived of their property. They cannot always tell the person's age they trust. Besides, if they were cut off from recovery, though they would be great sufferers, yet the infants themselves would be greater; for we abound with young people of both sexes, who, having lost their parents, seek a livelihood in the shops; and as oeconomy is seldom found at fifteen, they would starve, if not assisted by others. They gain credit by sollicitation and distress, on one side, and by self-interest and pity, on the other.

There are also great numbers of families among us, where the husband is not only an apprentice, but under age; where the united years of the man, his wife, and whole groupe of children, would not make forty. The same imprudence which led them into matrimony, leads them still. Such a family can seldom support itself. They would be material sufferers without credit, and how could they gain it, if there was no redress for the creditor? It is the interest of these infant families to be amenable to the Court, rather than perish with want in non-age. We find as much cunning practised, to get a man's property, under twenty-one, as above. Why should there not

then be a remedy? It follows, it is dangerous to attack infants, lest we run into an error; it is dangerous to let them alone, lest we run into a greater. To avoid both evils, the Court have long practised a middle conduct. They will not suffer an infant to be drawn in by an adult; but if they are obliged, by equity, to press him, it is always with a gentle hand.

When a girl of twelve or fourteen has been brought before them, they have represented to the plaintiff, the severe treatment to a child, from whom discretion could not be expected, whose inability for payment was obvious, and the danger that might attend her lying forty days in a corrupt prison. The arguments have generally prevailed, and the plaintiff has withdrawn his action; but when, through obstinacy, he refused, the Court, by their own authority, have dismissed it.

Except in particular cases, the Bench seldom plead a minority in favour of the defendant, because it would be putting a wicked argument into his mouth, against paying a just debt. The Court are not bound to take notice of his non-age, except he pleads it; nor regard the plea, except he proves it.

If a person is sued for necessaries, such as food, clothes, physic, shaving, surgery, lodging, &c. the Court over-rules his plea of child-hood, but treat him with great moderation, by charging the payments easy; for if they charged them high, his ability, mixed with imprudence, might not be able to reach them; and if they dismissed the cause, he might want assistance in distress.

But if the debt arises from what the debtor might well have done without, such as gambling, horse-hire, money lent, tipling in an ale-house, notes of hand, childish contracts, &c. his plea is admitted, and the cause dismissed.

An order of the Court will hold good during the life of the parties. An execution as long.

If a plaintiff dies before the debt is paid, the debtor is justified in paying it, according to the order of the Court, and the successor of the deceased has a right to receive it. But if the debtor neglects payment, he cannot be served with an execution, because that execution must issue in the name of the plaintiff, who being dead, his name is lost. But the successor may sue him in his own name, and will recover.

If a defendant dies, while any of the payments remain due, I am inclined to think the body uninterred, is liable to an execution; though I have never known an instance, because the sentence of the Court lies against that body. His goods are not seizable, for at the moment of his death, they become the property of another, who is liable to pay.

As the Court cannot proceed against a man till he is served with a summons, personally, or at his abode, nor confirm their judgment against him on a future day, till he is served with an order, declaring that judgment, and both these services attested upon oath; so when their judgment is once past, it is irrevocable; whatever is wrong, cannot be altered. The error was his own, he ought to have appeared and justified himself.

If a man swears to an unjust service, he lies at the mercy of the defendant, for taking a false oath.

While a commission of bankruptcy was operating against Laugher, he was taken in execution. He pleaded, by his attorney, a protection from the commissioners. The bench could not object to the protection, because the Court of Chancery can controul

controul the Court of Requests; but as Laughter was taken two days before the sitting of the Commissioners, the Court naturally enquired "to what length of time the protection extended?" It was agreed by both parties, that no certain space could be fixed, but that it must be a reasonable one. If the bankrupt resides on the spot, his being taken two days prior to the sitting, is legal, and the keeper may conduct him under a guard for examination, and return him to confinement. But as the bankrupt came from Evesham (20 miles) the Court thought a longer time necessary, therefore, ordered the execution to be suspended.

When the body is taken in execution, if the plaintiff and defendant make the matter up, as is the usual case, either by payment or otherwise, the latter pays five shillings to the beadle; but if he discharges the debt by imprisonment, it is paid, as before observed, by the plaintiff.

If a soldier is taken, and his officer demands him, the execution is suspended, but it holds good to futurity; the beadle has a right to the fee because he performed the work.

Several executions may lie against a person at the same time. If he be served with one, he must
with

with all, provided they are in the hands of the same beadle, because he cannot justify keeping, when he might serve them; and the same forty days imprisonment, pays for all. Half a dozen executions may be levied upon a man at once, who may do them all away in forty days. William Lewis is at this moment, Jan. 1786, discharging seven in the prison; a second seven may be ready at the expiration of the first; and perhaps nothing would give him more pleasure, than to contract as many debts as would furnish a third. He who is well able to live upon his own industry, had rather live upon that of another.

If a beadle is in possession of an execution, has an opportunity of serving it, and will not, or if he serves it, and through connivance, or negligence, suffers the prisoner to escape, he is liable to pay the debt.

Alcock ordered an execution against a person, which was put into the hands of the master of the prison. The same person was taken in execution at the suit of another, and committed. When Alcock understood this, he ordered his own execution to be withdrawn, that the prisoner might not cure two evils by one confinement. But the officer served it. Alcock provoked at the disappointment refused.

refused to pay the five shilling fee. The beadle sued him; it was proved upon the trial, that the execution was served prior to the counter-order, which Alcock denied.

The Court observed, it was of no consequence when the counter-order was given. We may easily suppose Alcock's execution served, the moment the prisoner entered confinement, because the beadle durst not omit it. Had the execution been in the hands of another the countermmand would have been good. It would introduce a president replete with mischief to dismiss this cause in favour of Alcock; he might then sue the beadle for neglect, and would recover from him the prisoner's debt, because he neglected a service in his power. We cannot consent to punish a man in his duty. Neither can it be justified to the prisoner, to confine him a double time, for two executions, which legally operate at once.

Bridges not performing the orders of the Court, was taken in execution at the suit of Archer. "Set Bridges at liberty," says Barton, "and I will see you paid." Several years elapsed, and Barton died. His heirs are not bound by the promise, because a promise cannot descend. Had Barton received the money, his estate would have been responsible,

responsible, and his heirs might have been sued. The execution, many years after, was served a second time upon Bridges; this was illegal, because two executions, or one served twice, cannot operate by virtue of one order. An agreement taking place, instantly disarms the execution of all its powers, which it can never resume, but by passing again through the Court. A new debt is created by this agreement, augmented by the expence. Archer may sue them either jointly, or separately, for in this act they are partners.

L. by his servant sued Nash, for 34s. The Court not knowing Nash's circumstances, and the wife pleading poverty, charged only three shillings a month. L. surprized afterwards at so low a sum, applied to a Commissioner, and urged a speedy payment, or he should lose his money.— The Commissioner answered, That while a cause lay open to the Court, they had a right to make any alteration, but as an order had already been issued against the defendant, it was unusual to revoke it without his consent, because objection arose from himself. The Court, however, for the reasons given by L. made the cause final in a month, by a second order. All payments at the office are entered upon the margin of the order, which answers the end of a receipt, and serves to remind

remind the defendant of the state of his account. When a month had elapsed, Nash took three shillings with the *first* order, upon which the secretary inadvertently entered the money. L. issued an execution for not fulfilling the second order. Nash exulted because he had paid to the order, which he produced, and the secretary was frightened for the error he had committed. The parties appeared to the Court, who remarked, as one cause cannot produce more than one order, of course the authority of all preceding orders centers in the last. Like the surviving heir at law, it holds all the power of its predecessors. The last order, like a last will, totally destroys the first. Nash will demand his three shillings from the secretary. The execution was valid. This alteration, however, should never be made, except the Commissioners are perfectly right, because it deprives the defendant of a future appeal.

A cause between two rascally people, had hung long upon the bench; which at last was determined in favour of the plaintiff. "Well," says the defendant, as they were going down stairs together, "if I must pay the money, I may as well pay you now, without waiting the order of the Court." The plaintiff received it. After a month had elapsed, he ordered an execution for the money he had received. The defendant stated
the

the case to a Commissioner, who replied, "You
" are duped by your own simplicity. The man
" who knows how to over-reach others, is seldom
" over-reached himself. He has caught you in
" a knave's trap; a trap you are well acquainted
" with; get out how you can. Your design was
" to deprive the officers of those fees which were
" their right, and which they deserve. As the order
" stands against you, you are obliged to pay the
" money. The Court has no power to rescind its
" decrees. You may bring an action, and spend
" twenty guineas to recover one; or if you please;
" may summon the plaintiff, and try if the Court
" can render that justice to you, which you deny to
" them."

The cause was afterwards brought on, when it appeared, the defendant had *for once* told truth.—The Court observed, a determination cuts off all *past* connexion, but no way affects the future. It is of no consequence whether a subsequent transaction commences one minute or one year after. As the money now sued for, was advanced to the present defendant after the Court had decided between them, it becomes a new debt; and as every crime deserves a punishment, we shall order immediate payment, because he abused a power he had no right to use.

The

The new created defendant was ordered into custody, but possessing property, paid the money, and prevented farther mischief.

P R I S O N .

We are now to survey the last stage in this little system of government *The Prison*. A place entered with sorrow, and sometimes with forced joy, but always left with real pleasure. A stumbling block avoided by prudence, over which misconduct falls, receives a wounded character, and the scar seldom wears off. If innocence suffers it meets with pity, but offences, with justice. This, as observed, is the consummation of the laws, for without it, they lose their force. It preserves order when other applications fail; a necessary evil to promote a good. Here the prisoner loses his consequence as a man, submits to command, and enters a kind of second childhood, by being deprived of liberty; which is, of all things, the most regretted, when lost. Here he is taught a severe lesson, by which, he seldom improves;—an humiliating one, he seldom forgets. Here he repents, at least while the doors continue locked. He would willingly exchange his abode for any other except the grave.

The

The place of confinement belonging to this Court, where the debtor discharges the debt without paying the creditor, was, for many years, two rooms in the town prison, emphatically termed *The Dungeon*. A view of this dreadful abode, one would think, was nearly as irksome to the keeper, as the prisoner. Though we have been taught to consider some regions under ground, of a more diabolical aspect, we know none above. This circumscribed place becoming too little for its prisoners, those of the Court of Conscience, being the least profitable, were obliged to give way, and their prison was changed, without being amended.

There is not, in the whole system of British legislation, so great an evil as the deplorable state of our public prisons, nor an evil that would better pay for redress. One cannot touch upon this unpleasing subject without taking up the arguments of *Howard*, who, by visiting the prisons, may be said to have ventured his life for his country oftener than any man in it, and who deserves much at her hands; I am sorry no more attention is paid to his remarks.

Upon the health of the guilty, depends that of the innocent, witness the gaol fever; the depredations upon the lives of accidental visitants; and

and the dreadful havock upon the courts of justice from the noisome effluvia of the prisoners. Hid from the world, in darkness, the friends of these unhappy people, who would bring relief, and those in power, who would redress their grievances, dare not approach them. They may say with propriety, "I was in prison, and ye visited me" not, a duty which, even the willing, could not perform but at the hazard of his life.

Air and water are the common birth-right of every man. No act of his own, or exercise of power in another, can justly deprive him of them. While he has liberty, he will seek *them*; when he is deprived of that liberty by the laws of his country, they ought to seek *him*. He has the same right to both, as to the ground on which he treads.

The punishment inflicted by law, on the delinquent, is supposed, equal to the crime; every thing beyond is barbarity. Why then is there, in the denial of air and water, an addition to that punishment? Whatever he suffers from want of food, deprivation of liberty, or chastisements of law, are trifles compared to his sufferings from a filthy prison; for from this, though his crime be

F small,

small, he frequently forfeits his life. The place of confinement becomes a greater punishment than the sentence.

We cannot without the strongest indications of concern, peruse, in the above amiable author, "that out of 632 convicts condemned to the Thames, in the *Justicia*, 176 died in nineteen months." Effects equally fatal have happened in many of our prisons, from the want of air and water—I am sorry to add, the prison belonging to the Court of Requests possesses neither. This consideration has repeatedly introduced a favourable decision, that the defendant might avoid it. There are evils a man can lament, but not cure; he may remove a mole-hill which stands in his way, but a mountain requires the assistance of many.

I was asked at a public meeting of the inhabitants, Whether an imprisonment of forty days did not more than atone for a small debt? Perhaps I returned an indecisive answer—perhaps none. But one would think *that* punishment is not too great which does not cure the defect. I have known many an obstinate defendant lie the stated time in prison, merely out of revenge to the plaintiff; when, with a small degree of prudence, he was well
able

able to pay him. If we confine our ideas to a simple imprisonment, it is not too much; if we add affliction, it is.

Hands and Kaey, elated with the smiling prospects of fortune, at the close of 1785, began the art and mystery of button-making, but at the close of 1786, it appeared they had only learnt the art and mystery of consuming 600*l.* of other people's property, at which time Hands died, and Kaey ran away. The widow, to profit by the event, sold up part of the effects amounting to 99*l.* which she wished to keep with the other part. One of the creditors sued her for thirty-six shillings and sixpence, but she chose to lie in prison forty days, rather than discharge it; which is a powerful argument that prisons ought not to be made very comfortable.

The same misconduct which contracts a debt, often produces an unwillingness to pay it; from this, and from so large a number as one hundred and thirty causes a week, result many executions. But through the terrible ideas of a prison, assistance of friends, interest of a master, who sometimes cannot part with his man without a loss to his trade; fear in the plaintiff of losing his debt, and five shillings to the beadle, and from other causes, they are ge-

nerally compromised; very few continue prisoners forty days; perhaps the average number in the prison may be eight.

But although air and water are two natural blessings of a prison, yet there is a third equally desirable, *conveniences for labour*. Some of our prisons want the two former, but all seem to want the latter. Idleness is the brooder of mischief, the nurse of crimes, from bad she makes her votaries worse. Half the people that are hanged, are led to the gallows by idleness. This detrimental guest may be seen in full sway where she ought never to appear, in the prisons. Some hints upon this subject will be found in the twenty-second case, and in the second part of the bankrupt. If we examine the human species, we shall find an inclination to indolence, and a necessity to labour. These two opponents combat each other through life; victory alternately declares for both; though the contest may be unequal, it never ceases till death. The vast number of scriptural injunctions which tend to declare "that he who will not work let him not eat," proclaim the evil, and the cure. It appears from the human frame, that labour is necessary for the prolongation of life and health. By a habit of indolence, the animal becomes stupid, the fluids stagnate,

stagnate, and a foundation is laid for diseases which cut short existence. Labour is also a duty which a man not only owes to himself, but to others; for if we take away labour, we destroy social benefit. It assumes various names according to the class of people it influences, but is laudable in all.— With the opulent it is termed *amusement*; with the independent *exercise*; and with the inferior ranks, who wish to preserve a character, and enjoy conveniences, *industry*. These last are what we call the prudent poor, and are a people extremely valuable. But when a man possesses no income, and his inclination for indolence surpasses that for labour, many mischiefs ensue. As no maintenance arises from himself, it must, by some means, arise from others. Here then we behold invention upon the rack, to draw their property, by perfusion, promises, and falsities; contracting debts, by cunning, overreaching, plundering, &c. Hence this unruly class are cognizable by the laws of society. To the man of idleness, labour becomes more frightful than a prison, particularly that labour from which he can reap no benefit, for the profits should ever recompence the man he has injured; moderate labour can never hurt the body, and if irksome to the mind, the greater will be the inducement to honesty. It may cure a rogue, and preserve property, when nothing else can. Slender diet, soli-

rude, and labour, will deter a man from that mischief, which the hater never could.

If labour was introduced into the prison belonging to this Court, a material benefit would arise both to debtor and creditor; for instead of the former spending twenty or forty days in idleness, he might by industry, discharge the debt in a much shorter time; and demand his liberty; the latter might recover his right, and be screened from a troublesome five shilling demand.

I have sometimes given an order for a prisoner's release, though I have not the least authority; consequently the order was arbitrary; and the plaintiff might have charged me with the debt. But I have never taken this liberty except in cases of extreme necessity; such as an alarming decay of health, a contagious disorder, a woman in the indications of child-birth, &c. But I never, by this unwarrantable licence, sustained the least injury; and perhaps the reason was, humanity might operate on the plaintiff. He could not attack me without a hazard to his character. If the prisoner returned to health, he would be amenable to the orders of the Court, and the execution would find him where it left him, for no satisfaction to the law, nor agreement between the parties had cancelled it.

A prisoner

A prisoner sent to inform me he was wrongfully taken in execution. The Commissioners, I replied, had no power after judgment; the whole matter lay between the plaintiff and himself. An hour after, the plaintiff, who was himself a Commissioner, applied, and assured me, "he had never given orders for committing the defendant, that he had, many years ago, sued him, got a verdict, and upon his non-payment, had served him with an execution, but that he immediately released him, upon the promise of a third person to pay the money, that he expected payment from that person, and that he did not consider himself possessed of a power over the defendant." Perhaps then, by some accident, he has been served with the old execution, which, like an old bolus, must not be administered twice.

I sent to the defendant in prison, signifying, there might be some mistake in the process, that I would give an order for his enlargement, upon his word, that the parties should appear face to face, the ensuing Friday before the bench, and the matter sifted to the bottom; that if the officers of the Court had ill-treated him, they should make satisfaction; but if the execution should be found legal, he should, like Regulus, return of himself to confinement. As I heard no more of the

matter, the parties, I suppose, settled it themselves.

The whole proceedings of this Court are authorized by an act obtained in 1752, by which three pillars were erected which sustain the fabric, the Commissioners, the Clerks, and the Beadle. The Commissioners are seventy-two; their names as they stood March 20, 1787, are as under, according to priority :

Joseph Smith	Richard Conquest
John Kettle, Esq.	William Medlicott
Benjamin Mansell	Stephen Colmore
Joshua Glover, <i>dead</i>	John Francis
Michael Lakja	Joseph Roper
Thomas Hunt	Thomas Hurd
John Ryland	John Woodcock
John Ward	William Walsingham
George Holloway	William Holden
John Richards	John Colmore
James Jackson	William Humphrys
Thomas Richardson	William Wright
Joseph Guest	William Salmon
Cornelius Whitehouse	William Ryland
Benjamin May	William Tutin
Samuel Ryland	William Taylor
William Hutton	Josiah Rogers

Joseph

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Joseph Jukes	Joseph Farror
D. Winwood, <i>removed</i>	Thomas Conway
James Dicker Budd	John Boucher
George Raven	Thomas Archer
Richard Brett	Joseph Rogers
John Rogers	Joseph Gibbs
Samuel Pemberton	Edward Hughes
Harry Hunt	John Ellis
John Allen	Thomas Colmore
Thomas Fletcher	Samuel May, <i>dead</i>
Thomas Bedford, jun.	James Murray
Thomas Hutton	Thomas Brown
Sem. Chantry	Thomas Porty
Thomas Cock	John Holmes
John Lawrence	Thomas Francis
Joseph Smith	Thomas Clark
Joseph Rabone	Nathaniel Lawrence
John Archer	John Francis, jun.
Thomas Phipson	Joseph Fearon

Once in two years, July 2, ten of their number are struck off by ballot, including deaths and removals, and ten others chosen out of the body of the inhabitants. Six are summoned alternately, by the beadle, to attend the bench every month, but their attendance is wholly optional; their powers are equal. Any three form a quorum. Decision is solely in them.

The

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The only qualification was, being an inhabitant; but by the act of 1786, no person can execute the office unless possessed of 20l. per ann. or a personality of 500l. and also be a house-keeper. The two first are admissible, but the last is detrimental to business. The greatest inconvenience is a want of Commissioners. Out of so large a number as seventy-two, there are not more than half a dozen accustomed to attend, and it is often difficult even to collect half these. The important qualification of being house-keepers will thin their number. I know some persons of fortune, capacity, and leisure, who would cheerfully take a part in this necessary work; but though they have every other qualification, they have not the leading one of being house-keepers. Perhaps it was supposed there were some hidden excellencies in house-keeping, that made a man more discerning! It may add to his expence, without clearing his sight, or cultivating his faculties. The knowledge of his head, or the honesty of his heart, are seldom improved by house-keeping.

The clerks, which are two, are attornies, chosen alternately by the Lord of the manor, as a compensation for the injury sustained in his Court Baron, and by the Commissioners. They continue

tinue during life, officiate by turns, monthly, and occasionally assist the Commissioners with advice. They preside over the office where the records are kept, the receipts, and the payments; and from them, summonses, orders, and executions issue. In this department are employed several of their servants. The present clerks are Charles Stuart and Joseph Harding.

The beadle is nominated by the Lord, as a further compensation for the reduction of his Court Baron. The Commissioners have power to discharge him for misbehaviour. To him belong the services, the cryer of the Court, the executions, and the prison. The present beadle is Joseph Fuller.

The greatest good, by mismanagement, may be perverted to an evil. If we reject method in conducting a scheme, we may as well reject the scheme itself.

When I first sat in this Court, the clerks and the beadle were under a private contract; the beadle was chargeable with every expence, was to pay the clerks an annual stipend, and appropriate the residue of the profits to himself. This genius of the Court was William Bridgens Barton, nominated

minated *Gentleman* in all deeds of lease and release; who, though possessed of about ten thousand pounds, was seldom master of a shilling, but frequently borrowed a trifle of his own servants, to pay his reckoning, or to satisfy a kind nymph. Notwithstanding this barrenness of cash, a stranger would think he was fond of money; for his littleness of temper would, at any time, suffer him to run of an errand for two-pence. He was equally averse to receive and to pay money. If he accidentally met a person in *his* debt, he shunned him by running away, or hiding himself in obscurity. If one came to pay, *Let it be* was the word.— Those who dunned him, always found him in haste, received ample promises, forgotten in a moment; but his good nature, of which he had a large portion, always warded off the blow.— Though he daily gave and took credit, he kept no private books of account; his counting-house was his memory, which was very retentive; but when he died, it was locked up with its contents for ever. He was landlord to a farm near twenty years, without ever receiving a shilling rent. Always in a hurry without making progress; he dispatched nothing quick but the tankard. Expedition never discovered itself but in getting drunk, in which he became so expert, by daily practice, that he could accomplish it in ten minutes.

nutes. I have known him drive a post-chaise to Warwick for as much liquor as he could tun into his vessel. It was indifferent whether he slept in a bed, upon the hearth of an ale-house, or under a manger; or whether he staggered thither, or was carried. He wrote an excellent hand, was master of figures, and well understood the business of an attorney's office. His fondness for employment induced him to work without profit; and yet, from his random conduct, his employer became a loser. His shoes received their last tincture of black from the currier. It was of no consequence to him whether he wore his shirt a week, or a month; whether his neckcloth was tied under his chin, or his ear; or whether the top or the bottom of his wig was uppermost. His beard and his linen were equal strangers to the suds.

The money belonging to the suitors must of course pass through the hands of this good-natured sloven, or rather, pass *into* them, for it seldom came out. The result was, the Court dwindled, the suitors complained, the Bench remonstrated, *be* promised, the evil grew, and the clerks were obliged to take their department into their own hands; since which time it has been conducted with prudence.

All

All sides were pleased, and the current of property was now to run in its right channel. Still, by the laws of his office, the money arising from executions must submit to the touch of his fingers, and we were again obstructed. "Of what use is the Court," says the suitor, "if we cannot have justice? We had better lose our money by the debtors, than be defrauded, at another expence, by the beadle."

The Commissioners entertained serious thoughts of discharging him, and perhaps three months would have finished their purpose, if, in the interim, the strength and quantity of his liquor had not sent him into another world, where he could not conduct matters much worse than he had done in this.

CASES

C A S E S.

WE have now gone through the only Court in the English constitution, conducted without a lawyer ; a proof that justice is not wholly vested in the band. A Court, but little used, and less known ; those who are best able to promote it, are not able to unite it with their interest. They find it a field that will not pay for cultivation ; its profits are small ; the produce arising from the contentious seeds sown here may be consumed by one or two people, which if sown in other courts, would maintain one or two score. As no author has described it, how can it be known ? It is a light which interest hides in darkness ; I, therefore, who have no private end to serve, attempt to remove " this candle from under the bushel," that the light may be diffused.

The process of this gentle and expeditious institution has passed in review before us, from the first summons, till justice was satisfied, by payment or confinement. We have seen the stage and its whole apparatus ; we shall now enter upon

upon incident and action; the characters will be many and various, the scenes will continually change, and a leading part fall to my lot.

Every one of the following cases is a sample of the manner in which the business of the Court is conducted; they are not exhibited as patterns of perfection; some of them, which I have marked with disapprobation, I have wished undone, but none were intentionally wrong. The excellencies and defects of a picture must be seen together. We are not to look for a perfect piece, where perfection is never found.

I.

The Attorney and recovered Debt.

Unhappy are a people when the laws under which they live cannot protect them; or, which amounts to the same, when they had better submit to injuries, than apply for redress. Thus a corrosive remedy, applied to a simple scratch in the skin by a hungry surgeon, who wishes a job, brings on a mortification.

A bill lately passed through my hands, which was returned for non-payment. The person
from

from whom I received it, paid me chearfully, and wished I could advise him how to recover the money. I told him there were many ways, and all bad; but two things must be considered, both rested with himself—Whether the drawer had property? and whether, in case of non-payment, he could trust the matter with an upright attorney? “I am afraid,” says my friend, “to employ one, for a person very recently owed me “twenty-four pounds; I employed an attorney, “who got it, and very honourably paid it; but it “cost me forty guineas!”

A youth inadvertently suffered a person, not worth a shilling, to get six pounds in his debt, and without once reflecting, that even the professors of the law cannot recover money of him who has none, imprudently employed an attorney. Provided the plaintiff is *good*, it is of no consequence whether the defendant wants, or abounds. Every cause is a prize, if either the plaintiff has money, or the defendant is in the wrong.

Our lingering cause was pursued through many a *writ of error*, till at last the youth could procure no better terms than those of taking the debtor's note for six pounds, payable at one shil-

G
ling

ling a week. The attorney's charge came to twenty-two pounds ten shillings, which the youth was obliged to pay, or become a defendant himself. Hurt at his multiplied loss, he asked me, Whether he could not get the attorney's bill taxed in the Court of Requests? I replied, It was the duty of a Commissioner to *judge* between two parties, but advise neither; that the Court frequently recovered money wrongfully paid; but if he recovered two pounds, it would make but a small reduction in a bill of twenty-two, where the profits were five hundred per cent.

A. employed an attorney to recover one pound nine shillings from B. who succeeded, and received it; but A. could not get the one pound nine shillings out of his attorney's hands, therefore sued for relief in the Court of Requests.

The attorney acknowledged receiving the money for the plaintiff's use, but brought in a bill of costs against him for recovery, amounting to three pounds two shillings. The Court was surprised, and the plaintiff chagrined. It appeared in the course of the trial, the plaintiff was not an inhabitant of Birmingham, consequently had no right to sue in this court, which caused a dismissal.

II.

Broken Windows.

This Court is beneficial, or why is it crowded? A shop which sells a bad article, will quickly lose its custom. Its powers are wished to be expanded, or why are causes brought before them which they cannot compass? People will never wish an increase of power in others where that power is destructive.

Sly sued Stokes for twelve shillings, which was denied in great wrath. By enquiring into particulars, it appeared, that Sly kept a public-house, in which Stokes got drunk, became riotous, broke the windows, and fractured the goods. Sly charged five shillings for broken glass, fourteen pence for ale, and the remainder for damage done to the furniture.

Court. Whatever you suffer by his misconduct, he ought to reimburse, as you gave no cause for misbehaviour. But there is only a small part of the cure with us. Our powers extend no farther than to matters of debt. There are two remedies for the injury done to your property; a warrant from a justice, and an action of damage. The

first will avail you but little, and the last will be worse than your loss. Those actions are the most dangerous where your antagonist has nothing to lose. We can only make an order for the fourteen-pence.

Sly. But I have seen you make an order for the repair of windows.

Court. Never, except when a tenant quits a house, when the repair of the glass is as much a debt as the rent.

III.

The man deceived by himself.

There is a strong propensity in man, even in people of fair character, to rob one another according to law. The desire of recovering lost property carries him beyond the bounds of justice, and creates in him a prejudice, which makes him an ill judge in his own cause. If the person who really ought to pay, is rotten, or absconded, the creditor looks about with a keen eye for another, upon whom he can fix the debt; so that if he cannot catch the substance, he will attempt the shadow.

A mason

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A mason sued the late John Baskerville, Esq. for some stone work done at the gates leading to his house. The defendant did not know the man. He had had the work done, but Mr. Such-a-one was the undertaker, who had been fully paid. It appeared, the plaintiff was employed in the work by this Mr. Such-a-one, who had since failed, and ran away without paying him, and rather than lose his money, would charge it to any body else, if there was but the least prospect of success.

Court. Your action is wrong founded, you was a servant to the man who employed you, and he alone is responsible. You have no more claim upon the defendant, than the journeyman taylor, who made your coat, has upon you. The master is the barrier which cuts off all connexion between you and him. When you are shaved, you pay the barber, and the barber his man who shaves you. A decision in your favour would put a period to order.

IV.

The Pump.

If it is common to fix upon one man, what another ought to pay, it is as common to put that

debt upon another, which we ought to pay ourselves. Every pretext to shift off payment is pleaded. The fallacy of our reasoning can be seen by all but ourselves. We contradict the plain language of justice, and, at length, fall by our own argument.

Court. What is your demand?

Plaintiff. Eleven shillings.

C. Is it just?

Defendant. No; I do not owe him a farthing.

C. How does the debt arise?

P. There is a pump in the neighbourhood, for the joint use of the tenants. It has lately been repaired; each tenant pays a proportionate sum, according to his rent; all have paid, except the defendant.

C. [*to the defendant*] Was the pump out of repair?

D. Yes.

C. Was any part of the expence unnecessary?

D. I suppose not.

C. What objection can you make against paying your quota?

D. I

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D. I have never paid any thing, neither have I a right to pay. I gave no orders to have it done, I never promised payment, neither has any man a right to lay out my money.

C. Should you think it fair, if all the neighbours went free, and the whole expence was saddled upon you?

D. No.

C. Then what reason is there that you should go free, and your neighbours bear the whole? Had they been all of your mind, they would have been deprived of one of the greatest blessings we know; or rather, like you, would wish to enjoy it at the expence of another. If you have never paid to former repairs, they have granted you a favour you do not deserve. As they have all an equal right to the pump, they have an equal right to pay. If you gave no orders, it was not because orders were not necessary, or the water not wanted; but that another, more spirited than yourself, might step forward and furnish you with a pretext. If you *had* promised payment, you would have stood in a more honourable light. He lays out his money himself who pays for a necessary article, which cannot be had without; but if you take that article, at the

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expende of your neighbour, you do him an injustice: so shall we, if we do not order payment.

V.

The pleasures of matrimony.

Law, with its rigid fetters, binds what conscience sets free. Law knows no mercy. Equity knows no rigour. If this Court cannot proceed contrary to law, they can proceed without it. Nature has furnished every man with the talent of judging between right and wrong; the paths to both are strait and even, though the light is sometimes defective.

It is a duty, an interest, and a pleasure, for a man in the conjugal state to promote *his own* happiness. If he lives in amity with his wife, he fully enjoys the benefit himself. There is no species of happiness more interesting, none will better pay for cultivation, none is so much neglected. Love is the foundation of this felicity, and this often rests upon prudence. If love does not exist, happiness cannot. If a man is unable to love his wife, let him try to pity her; none ever repented, or went unrewarded, who made

the trial; if she has not his affections, she merits his pity, and pity is the sister of love. He will suffer more by hating *her*, than himself. He can easily excuse his own faults, let him try to excuse hers. He who barter happiness for caprice, may improve by reading Paul's sentiments upon this subject to the Ephesians, or if sacred sounds hurt the ear, he may find an excellent lesson in the old song of Darby and Joan. On the other hand, if the husband is to love his wife, the wife can do no less than try to deserve it.

George —, and Ann his wife, lived together like other new married pairs, in great harmony. They lamented they had not entered into marriage, and happiness sooner. But alas, the smile, the moon, the dear, and their loves, wained, wore out, and changed together. These were succeeded by the fullen look, the back turned where the face should be, when a question was asked, and a cold answer given in the monosyllable, No. The dainty bit was now cut for dear self, which used to be offered to *dearest* life. She exercised her tongue upon him, and he his foot upon her.

Matters cannot always grow worse; they will come to a period. It was prudently judged, if two people must plague each other, they had better
plague

plague at a distance. If it was better to marry than to burn, it was better to part, than to kill. Our couple, who possessed more wisdom than love, chose, like their superiors to separate. But here a difficulty arose, how could a maintenance be obtained? George hated oeconomy, and madam hated labour. George thought it cruel to work for one he detested, and she could prove from scripture, under the very hand of Paul, that a wife ought to be supported by her husband.

Her friends were consulted, and by an indenture tripartite, George was to allow her twelve pounds a year, and be screened from all demands she should make, or debts she should contract.

If a woman spends twenty-four pounds, she will find it difficult to cover that sum with twelve. This being our case, the result was, George was pestered with duns, arrests, and suits, in various courts. All this did not diminish their love, for they had none. Among other courts, George was brought to the Court of Requests.

After the necessary enquiries into the nature of the debt, the Court remarked—All our laws, both statute and common, charge the debts of the wife upon the husband. Though in her family,
she

she may possess absolute power, that power is usurped, the law gives her none. The act of the wife, is deemed the act of the husband. It is necessary the husband should be responsible, or the creditor would have no security for the property he parts with. But in a case like this, where terms of separation are agreed on, published to the world, and known to all who know the parties, none can plead ignorance. A contract like this, ought in reason to be as binding as that of marriage. Though the law allows no separation without a divorce, yet it ought to be accepted, lest worse mischiefs follow. If we admit this doctrine, the parties may live comfortable asunder, if not, the husband is inevitably ruined. He is in the power of a revengeful wife, who may contract what debts she pleases. She may draw his whole fortune. A new gown would clap him into prison, and a millener's bill, make him fly his country. While the husband fulfils the original agreement, by paying the twelve pounds per annum, which by the way, is as much as his circumstances will allow, we will not make an order against him; if he fails, we will. Whoever trusts the wife, trusts in her own honour, for her person is secure, which ought not—but his ought.

VI.

The Sturdy Club.

Public faith, and private benefit, are the same thing; they tend to the same point. Two parties make a solemn bargain with each other, and both keep it *while it is their interest*. He who happens to become the first sufferer, is dissatisfied, feels the yoke sit uneasy, and exerts every effort to throw it off his shoulders, while the gainer loudly complains of his injustice, not considering that circumstances only differ, the men are the same, and if the tables were turned, each would act the part of the other. The criterion of justice is a man's own sentiments, and those sentiments are founded on his own interest.

Two members of a sick club sued the stewards for their weekly pay. The stewards alleged they had nothing to do with the matter, for the club was dissolved. This club had long existed, but being frightened at their two brethren, likely to continue sick for life, had put a period to the society.

Court. By what authority did you dissolve the club?

Stewards.

Stewards. By consent of the majority.

Court. If a majority can dissolve the union, what security is there for a sick member? No covenant can be made without the consent of two parties, neither can it be dissolved without the consent of both. The majority you mention, is but one party, a sick man is the other, and the covenant holds firm till dissolved by their joint consent. As you are a body of men united for your common good, you have a code of laws to support the compact, shew us the law that enables you to dissolve the union.

Their articles were produced, among which was one expressly forbidding the dissolution, while three members refused their assent. The Court was crowded. The body of the club were assembled to support their imaginary stewards, and to hear the result of a trial interesting to all.

As the cause did not seem to turn much in their favour, they insisted upon a continuance to a future day. This the Court will not refuse, provided light can be thrown on the subject, and there appears no views of delay.

Finding themselves the weaker side, they applied to a lusty lawyer of Northfield, who, like
Nero,

Nero, was born to keep the world in awe. He wrote to the Commissioners, in which he drew out all the artillery of the Courts above, pointed it at their devoted heads, and threatened destruction if they proceeded against the club.

The same ground was trodden over the second hearing as the first; when the club, finding the Bench were not subdued by their powerful auxiliary, solicited a third hearing, which was granted; when the man of Gath appeared, formidable at the head of his troop. He contended that no action could lie against the defendants; that they were not stewards, that their time had been long expired; that they could not be sued for the money they never received; that the club did not exist, for the body of men which had formed themselves into a society, had a right to dissolve it; that the consequences of an arbitrary decision would be dreadful, and that he was authorized to commence an action.

Court. We must accept the defendants as stewards unless you can make a subsequent set appear. We consider the club to exist; because as there are three objectors, it has not been legally dissolved. The man who enters into a bond, cannot cancel it of himself. A bargain is

is binding till dissolved by all the parties that made it. We should dread an arbitrary decision more than we should your action. The intent of a club is to support the sick, which is not done by quirk, bully, or finesse; but by a fair distribution of that money which the afflicted have a right to. A box loaded with sickness, cannot warrant a dissolution. They are bound by their own laws, and we must lend our aid that those laws may not be broken. The whole is an act of their own, and they must abide by the event. We are sorry to draw money from the stewards, who perhaps have none besides their own, but justice demands it. We can, however, put them in a way to reimburse themselves; apply individually to the members, and if any refuse to pay their share, bring them here, and we will enforce payment. We must give judgment for the plaintiffs.

The attorney d—d the club for ignorant fools, who had misinformed him; the club accused the attorney for promising more than he performed, and the stewards went away satisfied.

VII.

The Present.

One would think, if a man serves seven years in a narrow Court like this, where the whole system of power is comprized in the slender sum of forty shillings, nothing can offer but a return of the same causes in rotation, like the days of the week. But if he serves seven score, he will continually meet with something new. The difference of causes, like that of faces, is infinite.

John Barrs eat much, worked little, drank more, waxed fat, got into debt, packed up his goods, cheated his creditors, and ran away to London. An acquaintance of his desired he would take a small present for a friend there, which was sent to Barrs's house, but he not being at home, the messenger left it with a neighbour, desiring he would give it him at his return. The neighbour supposing the property Barrs's, and not seeing him, kept it towards a debt he owed him. The acquaintance sued the neighbour for the present detained.

Court. You cannot justify detaining the present, because it was not Barrs's. If you have any right
it

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it must be derived from him, but as he possessed none himself, he can convey none to you. He was no more than the hand through which the property passed, from one owner to another, without being an owner himself. If a common carrier is in your debt, you cannot detain the goods he conveys, because he himself has no right to detain them. You must either pay the demand, or return the goods.

Neighbour. I will pay the demand.

VIII.

The Carrier.

Let me open for your inspection a common page in the history of a trial. When a cause commences, it perhaps gives a shock to the mind, equal to that of electricity to the body. The internal powers rise into a ferment, like ale in a vat. One party, perhaps both, privately brings his summons, perfectly clean, his cause piping hot, and himself out of breath to a Commissioner.

“Sir,” wind meeting wind, choaks his words in the gullet, his hat covering the right ear, “Sir, “you hold the Court of Conscience.”

H

No

No Sir, I do not.

"I though you had sat there!"

I do not sit *here*.

"I only wish to open an affair that will come before you"——

Had not you better keep it shut, till it comes, with the parties, before the Bench?

"Only, Sir"——

But what will the world say, if I try causes at my own house? What will your antagonist say if he knows you have received a private opinion from me?

"He will never know it."

He shall not. To give a sentiment here, is an affront to the Bench. You can have no motive for applying to a Commissioner, but to prepossess him in your favour, which is taking an unfair advantage of your enemy.

"Only hear, Sir, he has used me d—d ill"——

Is that a reason why you should use me ill, in forcing your cause upon me, which perhaps is bad, or why are you solicitous that I should mend it? You have differed with another, and if I do not join in your sentiments, you stand a fair chance to differ with me.

"I only

"I only want to *insence* you in the affair, which
 "is"——

I do not want to be *insenced*, neither have I *time* to examine cases; I willingly allow a large portion to the Court, but it takes a larger, nay, it is with great difficulty that I can prevent it from taking all. If I appropriate one day in the week to the Church, and another to the Court, I wish to possess the remaining five myself. Necessity obliges me to repel private applications, or every moment of my life would fall a prey to the Court. A public shop, in a central situation, furnishes an easy access for the suitor. I must either speak, or hear others, round the twenty-four hours. Cut off from business, rest, amusement, food, and sleep, the animal would sink under the weight. I am called from the private avocations of a family, dragged from the interesting connexions of a friend, to decide upon a cause partially told. My ears are doomed to receive the same words ten times repeated, or disoblige, when I wish to avoid it. If I am casting up an account of soul, a stranger, like you, can break in without ceremony, and kick down the fabric in a moment.—My rest is interrupted, my meals sported with, nay, I am even called out of bed for an opinion; for where one man *gives* what another wants, he

will never want custom. Warmed with his own cause, the solicitor forgets I am liable to take cold, while he detains me a prisoner half naked.

“ 'Pon my word that is very wrong !”

You, as keen sighted as the rest, can behold the moth in the eye of another, but not the beam in your own. You now offer me the same wrong in a less degree, and like every applier, only wish me to favour *your* cause, and allow me to reject every other.

Materially interested himself, he cannot yet give up the argument, which obliges me, at last, to finish it with a frown, or a flight.

Disappointed in his expected auxiliary, he tries the cause in his own bosom, musters every argument, and every evidence, in his favour, and wins his ground with ease ; for in every contest, both parties expect to rise victorious. But alas, when the cause opens to the Bench, it appears, he had only mustered the evidences on his own side, and forgot those on the other. Thus his visionary mansion dissolves in air. Had I attended to his story, he might have deceived *me* ; had I given a judgment upon it, I might have deceived *him*.

No

COURT OF REQUESTS.

No man can pronounce fairly without hearing both parties. No party ought to be heard, except at the Bench.

A manufacturer sent a parcel of goods, value three pounds, to a shop-keeper, at a market-town in Leicestershire, and when he delivered it to the carrier, ordered him not to part with the goods without money. However, by some little neglect in the carrier, and a little finesse in the shop-keeper, he got possession without payment.

During about three months, the manufacturer repeatedly applied to both, but without effect, when the shop-keeper failed. The carrier was brought to the Court. Each of the contending parties made private attempts to win the Commissioners, but, like the priests, who had quitted the confessional chair, they could not attend either to truth or falsehood.

The carrier insisted he had nothing to do in the matter. He was only the hand through which the goods passed. That he did not find out the shop-keeper, fell him any thing, nor get any thing by him, therefore had no right to be responsible. That the manufacturer did not look upon him as paymaster, or why did he apply to the other?

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Court. Had no injunction been laid upon you at the delivery of the goods, you had stood clear; but that injunction was part of the bargain, the terms upon which *he* sent the parcel, and you carried it. If the shop-keeper did not pay you, you had a right to bring it back, and charge double carriage, but none to leave it. His asking the shop-keeper for payment, no way affects the question, you are both responsible for the money. He can claim upon the shop-keeper, you cannot. But if you pay this money, you can claim, and he cannot, except for the one pound and a penny, which we will persuade him to give up in consideration of your carriage, and your loss. We must decide against you, or put a period to verbal agreements.

IX.

The Executor.

A person died to whom the plaintiff owed six pounds. The Executor of the deceased made several applications for payment. The plaintiff gave him a fifteen pound bill.

Executor. I have no cash to give you in return, and it will cost half a crown to get the bill discounted, which I expect you to pay.

Plaintiff.

Plaintiff. I will not pay a farthing, but will take the bill again.

Ex. Leave it with me, and I will try to procure the cash.

When the plaintiff returned for the bill, or the balance, the executor stopt half a crown, which the plaintiff not consenting to, applied to the Court for redress. The executor, by his attorney, urged in defence, that he considered himself only as an officiate under the will of the deceased, that he had nothing for his trouble; that he had lost much time in soliciting payment; that it would be unjust to oblige him to pay the money out of his own pocket, and that he had made a reasonable charge.

Court. Your accepting the office of an executor was an act of choice, you are, like every other person in the same situation, answerable for the errors you commit. If the plaintiff procrastinated payment, the compulsive power was in your own hands. We shall not enquire into the reasonableness of the sum for discounting the bill, but whether you had a right to do it all. While it was another's, you could not bring upon it any expence; while it was your's, you could not bring

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any upon the plaintiff. A decision in your favour would draw after it a train of evils, which ought not to exist in a commercial country. A receiver might then, from caprice, discount any bill, perhaps at a dear market, and the payer, without any consent of his own, be subjected to an arbitrary demand. Had he consented to pay the discount, you had gone upon sure ground. A receiver may return a bill, as well as a light guinea, and demand something better in payment, but he cannot sell either, without the consent of the owner.

X.

The impoverished Club.

There is a pleasure in removing the difficulties which fortune has thrown in the way of another. Misconduct and misfortune are treated as synonymous terms; but though they are generally the same, yet in the following case they differ.

One of the members of a club who was sick, demanded his weekly pay. The stewards pleaded the poverty of the box. He brought them to the Court. It appeared upon the trial, that the sick man had a just right to his claim, and the stewards
a just

a just one to refuse him. Every member had paid up his full share, as directed by their articles, therefore, no demand could lie upon them. But the box was overloaded with sick members, which rendered the weekly supplies inadequate. Neither side wished to infringe the laws, but neither were able to keep them. In this delicate situation their laws could not be kept. If the Court did justice to the members, they would wrong the sick, and if they awarded for the sick, they would wrong the members.

It is easy to establish peace among people who are willing to agree.

Court. We should be sorry to punish a man who has not committed a fault. Neither side has erred, yet both are oppressed. As this is a case which rarely happens, and against which human foresight could not provide, we recommend, that every member in health shall contribute a trifle weekly, more than the usual sum, during the sick state of the box, and that the money be prudently distributed in different sums, according to the degrees of sickness.—The proposal was joyfully accepted, and the cause dismissed.

XI.

A Judge may quit the Line of Justice.

It is an established opinion, that "there is no general rule without an exception." This maxim holds good in equity. Every man ought to have his own, and the Bench ought to assist him in recovering it. But there are cases, though they rarely occur, where the Bench ought to act against the injured, and even assist the culprit. This step is out of the reach of law, and can only be attained by equity. Law knows no attribute but that of justice; equity can introduce mercy. Law gives a man his right; equity fees cause to deprive him.

The mind may be softened by lenitives as well as the body. A master knows when to apply them to both, with a prospect of success. But there are a few instances where they have no more effect on the body than upon iron, and where persuasion will have no more effect upon the mind, than oil upon adamant.

A person sued a poor old infirm man. The debt was just.

Court.

Court. It appears from the circumstances before us, that this man is not master of one penny; he never will be able to earn one. He possesses no property. There is nothing he can call his own, but age, sickness, and poverty. He is one of those few that a thief cannot plunder. He never will eat, but at the expence of another. It is remarked of age and infirmity, that a man has "one foot in the grave;" but this miserable object may fairly be said to have two. We wish you to withdraw the action.

Plaintiff. The money is my due, and I will not withdraw it.

Court. His non-payment arises from inability, not from obstinacy; and this inability will never be removed. It is cruel to punish a man for not doing what he is unable. We may as well attempt to strike money out of a flint, as out of him who has none. As a few weeks, at the utmost, will finish his wretched existence, and as common humanity forbids us to suffer him to die in prison under our warrant, we shall set the payments as low as the Court can allow, and protract the first for three months, by which time he will, in all likelihood, be removed to that place, where stern justice never frowns through the features of a creditor.

XII.

Match a knave.

If you cannot catch a knave in *your* trap, catch him in his own.

The stewards of a sick club sued a member for the arrears of his weekly contribution.—He pleaded his nonage.

Court. Are you married ?

Defendant. Yes.

C. And so you are, at the same time, a husband and an infant. Was it honest in you to enter this club, and, if attacked by sickness, to draw money from the box, and yet, to prevent paying what was their due, shelter yourself under childhood ?

D. I have never received any thing from the club, consequently I owe nothing to it.

C. So much the better that you never had *occasion* to demand from the box ; but every member, though he enjoys a series of health, receives a constant benefit from it ; for the very idea of a support in the day of affliction, yields to the mind
a daily

a daily satisfaction. Health may be better enjoyed when there is a treasure laid up for sickness. Your not receiving is no argument why you should not pay. You continually held a claim in reversion. As we cannot precisely determine a man's age by looking in his face, we have a right to demand a certificate of your's.

The next Court-day he produced one from the Church register, by which it appeared that twenty-one years had elapsed within three or four weeks.

Court. This proof does not come up to the point. What age was you when you were baptized?

D. I cannot tell.

C. A man arrives at maturity twenty-one years after the day of his birth, not his baptism. We generally suppose a child may be a month older than the date of the register. But in cases where one party wishes to defraud another, it becomes necessary to draw the line with precision. If we strictly adhere to a register, it follows, those children who are not baptized till three or four years old, will not be of age till four or five and twenty; nay, we have known instances of people being baptized at forty, which would give them
a license

a license to do, what they often do without—cheat the world till threescore. As you cannot ascertain your exact age, we shall set aside your childish plea, and do you the honour of treating you as a man; an honour you would gladly accept in any place but this.

XIII.

The second-hand wife.

Every thing is great, or small, by comparison. As this is a little Court, I can treat the reader with only little matters. The man who deals in pounds will view shillings as trifles; but one shilling is a serious thing with him who has but two. Diminutive as this Court appears, it often grasps a sum equal to the whole fortune of a suitor. If then it seems little to the great, it is really great to the little; and yet, when I have seen, in a superior court, a judge in tremendous scarlet, nineteen counsellors, who may be deemed explosives in society, watching, like birds of prey, to feed on the carcase of contention; a jury with twelve serious faces, and a crowded court amply officered, all attentively employed in a twelpenny cause, which I thought was rated at twice its value, I have considered this grand court, with
its

its superb furniture, as completely little as that I describe. The higher the characters who condescend to play at push-pin, the more ludicrous the act; the greater the number of people employed about——nothing, the more they excite risibility.

Though the Commissioners have no right to clothe themselves in terror, neither do they practice it; though majestic looks, and a paltry office, are a miserable jumble of things, yet I have observed even the great tremble before them. I have seen the Bench put on a smile, to encourage the diffident, to stop the trembling hand, to assist the faltering tongue, dispel the rising tear, and, if presuming arrogance attempted to bear down an antagonist, they have supported the weaker side. Truth does not always lie with the most voluble speaker.

A huckster sued Risby for goods sold to his wife, at various times, for the maintenance of the family. Risby declared he had nothing to do with the goods, the debt, or the woman; that he never was at the shop, that she herself fetched them, that they were consumed in her own family, that he was only an inmate, and that instead of her being his wife, she was wife to another

other man. These powerful assertions were uttered in a tone that seemed to rise superior to the enemy.

Court. Did you partake of the huckster's property?

Risby. If I did, I paid the woman for it.

It appeared from various evidences, that she had a husband, who had entered into the army, and left the kingdom some years; that Risby and she had long cohabited together, as man and wife, and passed for such in the eye of the world. She had taken his name, and had one child by him.

C. By evidence, which we have no reason to doubt, you kept but one table, and one purse, as well as one bed. You know the goods were bought in your name, and upon your credit; therefore you cannot plead being taken by surprise. If to deny a fault adds to the guilt, it follows, an error diminishes by confession; consequently your's is doubly reduced, for you tacitly acknowledge two, living in adultery, and cheating your neighbour. Had your designs been honourable, you might at any time have put a period to the growing account. The goods were entered in your name, which shews that name
was

was offered as the responsible one to the huckster, and this could not be offered by any but the wife you owned and trusted. As you partook of the purchase, it is reasonable you should pay for it: You observed, you paid the wife; but an assertion, particularly from a faulty character, is no proof: We can easily believe you frequently gave her money, or the family could not have subsisted. But the most material reason why you should pay is, you passed before the public as man and wife; you gained credit upon that supposition. We only take you to be, what you offered yourselves to be: If there is a deception, it was fabricated by yourself: We cannot examine registers, to find out who are married, in the cases before us: If a plea like your's was allowed, but few people could recover their property; the burden would be shifted from one to another, till nobody could be found to bear it: During your cohabitation together, you are responsible for her conduct as a wife. We shall make an order accordingly: If you are aggrieved, you have a remedy in your own hands, by charging the real husband with what you pay for his wife: but perhaps it might seem rather singular to saddle that husband with an augmentation of debt, and of family, of your own creating.

XIV.

The Securities.

Ethell brought his joint action against Hall and Smith, founded upon three notes of hand, value one pound nineteen shillings each, which he produced, signed Booth, Hall, and Smith.—The defendants denied the debt, and alleged, Ethell was over-paid.

Upon enquiry it was found that Booth had contracted an original debt to Ethell, of two or three pounds; that he afterwards contracted a second, to the amount of five pounds seventeen shillings, the value of the notes. Ethell being dissatisfied with so large a debt, Booth persuaded his two friends, Hall and Smith, to join him in the above notes. As it appeared by Booth's subsequent conduct, that, like the spider at the end of his string, he could not travel any road but the downward, Ethell procured a bill of sale, and sold up his effects, which paid the whole demand, except one pound five shillings, for which he sued Hall and Smith; Booth having ran away.

Court.

Court to Ethell. Though you had a just demand upon Booth for the whole debt, which was eight or nine pounds, you could not claim upon Hall and Smith for more than the value of the notes, because it is the whole of their security, and the only debt they were apprized of, and as that sum has been paid, your demand ceases. If we allow you to keep the notes, you may in some future time proceed against Hall and Smith, who are innocent, or indorse them to others for the same evil purpose. If we destroy them, we take away your just security against Booth; and if we erase the names of Hall and Smith, an absurdity arises upon the face of the notes, which run in a *joint or separate stile*. We advise you, therefore, to destroy two, and enter a memorandum on the back of the third, signed by your own name, that you have no claim by that note upon the two first, and only one pound five shillings upon Booth.

XV.

The oppressed Suitor.

Causes that come before this Bench, or any other, might easily be determined, could they be placed in a fair light. Right and wrong lie in a narrow compass, and may be decided upon by

a common capacity, if they could be perfectly known. But truth is a shy damsel, unwilling to show herself, and is often beheld in disguise.— All the little arts of persuading, threatening, coaxing, twisting, drawing, will not cause her to untail. An unfair decision sometimes takes place, because the Commissioners cannot penetrate to the bottom of a question. All the lights they can collect will conduct them but part of the way. They may be egregiously deceived, though they hear nothing but truth; for alas, as before observed, they can only hear a *part*. How would even Lord Mansfield, Lord Thurlow, or any other Lord, determine a cause, when the plaintiff and defendant contradict each other point blank, are of equal credit, and no evidence is produced by either? Or if they bring evidence, each knows how to follow his leader in the paths of contradiction. Such a cause would foil even the wisdom of Solomon, or the penetration of Daniel. Nothing short of supernatural powers could unravel it.

But there are some cases, though well understood, in which justice cannot be administered. They are of a complex nature; there has been a loss, and that loss cannot be repaired, without cruelty to one of the parties.

Pimlott,

Pimlott, a taylor, made a suit of clothes, value three pounds seventeen shillings for Masfield. Masfield, and Tonks, his friend, gave their joint and separate note for the money. Tonks paid some, Masfield more. The payments being defective, Pimlott brought his joint action for the remainder, one pound seventeen shillings, and obtained an order. This order not being complied with, Pimlott issued an execution against both. Masfield was taken, and lay forty days in prison. Tonks could not be found, Pimlott therefore changed it for one against his goods, which was served. Tonks, unwilling his goods should be sold, persuaded Pimlott to take his note for the money, payable by instalments.

Tonks then brought his action against his friend Masfield, for money paid on his account. Masfield pleaded that he had discharged the debt, by being a prisoner forty days.

The Clerk of the Court exactly coincided with the sentiments of Masfield, and declared, that no claim could be made upon him. The Court alleged, that Pimlott ought not to lose his money, nor should Tonks pay for what he never received.

An attorney of the first eminence happening to be upon the bench, as a spectator, both sides wished his sentiments, who observed, "That Pimlott might have had his remedy against Tonks, any time before the forty days expired of Maséfield's imprisonment, but not after, because that imprisonment cancelled the debt." — The Court, being assisted by the judgment of two gentlemen of professional merit, discharged Maséfield, and ordered Pimlott to rescind the debt against Tonks.

The more confidence we place in the judgment of another, the less in our own. The powerful loadstone attracts the needle, which would otherwise rest upon its own basis. We unfortunately forgot, for a moment, an obvious remark. He, whose talents are exercised in one pursuit, has the less to bestow on another. The man well versed in law, may be a stranger to equity.

The Court were afterwards dissatisfied with this hasty judgment, as doing an injustice to Pimlott. Things were so unfavourably circumstanced, that one of the three must be injured. It would be cruel to saddle the loss upon Pimlott; he had parted with his property, and had security from those who were able to return it. Tonks ought
not

not to pay, because he never received; and it may *seem* unreasonable to oblige Masefield to suffer twice for one debt.

I shall venture my opinion with great diffidence, upon a case, which has been decided by gentlemen of ability, for whom I entertain a sincere regard.

The money was due to Pimlott from both. He sued both, procured an order and an execution against both. If he took but one, he did not proceed to the extent of the warrant received from the Bench; he had done only a part, and might do the other whenever he pleased. It was of no consequence, whether he executed his powers against Tonks, before, at, or after the confinement of Masefield. If two men are concerned in a robbery, a warrant may issue against both, one only may be taken, and though he suffers death, he does not expiate the guilt of the other; each suffers for himself. If Tonks is bound for Masefield, Masefield, by the laws of equity, is bound to save Tonks harmless. Whatever he suffers, Masefield must make good; consequently, he must suffer for both. All the mischief originated from Masefield: Tonks was innocent. Had Masefield stood single, he would have discharged the

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the debt by the first imprisonment; but having involved his friend, he must set that friend clear. Masfield stood in a double predicament for himself, and his security. Pimlott's power ceases over Masfield by his imprisonment, but this cannot take away his power over Tonks. Tonks afterwards becomes a sufferer by Pimlott's power, which creates a new power in him over Masfield.

XVI.

The fleeing Journeyman.

The decisions of a Bench should ever be the same. That which is law to-day, should be law for ever. If they are founded in equity, they may be adhered to with safety.

To a looker on, who is not a nice observer, the Commissioners may seem to contradict themselves, and determine the same cause different ways.

A journeyman buckle-maker sued his master for one week's wages. It was found upon enquiry, that the master, when reckoning with his people on Saturday night, had, for want of silver, united two or three men together, and paid them
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in gold, putting the whole into one hand, but allotting each his portion. The man with whom the money was deposited, instead of paying each his share, ran away with the whole.

Court. Causes, like this repeatedly come before us, and have been determined for the master, or the man, according to one little circumstance. If the master delivers the money to one person, without the consent of the other, the hazard and the loss, if any, must be his. No man can dispose of my property without my consent. If this steward for an hour pays me, all is well, if not, my demand lies against the master; was not this the case, a rascally master and man, might combine together, and the industrious be deprived of their bread, without remedy. But on the other hand, if I acquiesce in the disposal, the master is clear, and I must look to the man for my share of the money, otherwise two rascally journeymen might combine to cheat the master, whose property would never be safe. As this money was delivered with the consent of the man, we shall dismiss the cause.

XVII.

The Noisy Suitors.

Who can travel in shackles! A plaintiff made his demand upon another, who flatly denied it. A scold immediately ensued, and was continued with great vociferation, chiefly by the plaintiff, notwithstanding the frequent interpositions of the Bench.

Court. Are we to sit silent, and have our ears tied down by the brawlings of two quarrelsome people, more noisy than a pair of tinkers? The obstruction chiefly originates from you [^{CI}*to the plaintiff*] as you will not suffer us to proceed, we shall dismiss the cause. When you chuse to bring it before us with temper, we shall be attentive. Both parties were surprized at this unexpected turn, which, in a moment, cut off their railings. They appeared on a future day, when the cause was determined to the satisfaction of both.

Had the aggression proceeded from the defendant, the Court could not have dismissed it, because the plaintiff would have been injured;
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 besides,

besides, it would encourage other defendants to become troublesome, that their causes might be dismissed, which would instantly defeat the intent of the Court.

XVIII.

Defective Powers.

If a court is detrimental, why is it continued, if beneficial, why are its powers cramped? A judge will generally do right, if he is no gainer by doing wrong; nay, he who does wrong is a material loser, for he has a character at stake.

One of the greatest pleasures a man can enjoy, is to make peace between those who differ. He too who obliges a man to restore that property to another, from whom he unjustly detains it, reaps as much satisfaction as he who keeps it. But if his powers are defective, he feels himself as much hurt, as he who lost it.

Two females appeared before the bench.

Court. What is your demand?

Plaintiff. She borrowed of me a black silk cloak, and will not return it.

C. Does

C. Does she owe you any money?

P. No.

C. [*to the defendant*] Have you a cloak of her's?

Defendant. Yes.

C. As the property is not your's, why do not you restore it.

D. I should have sent it back, but I cannot spare it.

C. What is it worth?

D. I do not know.

C. What would you give for it?

D. I do not know.

C. The cloak bears some value, and as you have long been in possession, you must be apprized of that value, What is it likely to sell for?

D. I cannot tell.

C. As the plaintiff, out of friendship, has favoured you with it so long, and as you find it so extremely useful, you would have no objection to purchase it an easy price, and pay the money when you are able; fix upon it, if you please, that easy price.

D. I

D. I cannot.

Court to the plaintiff. We are sorry your honest property covered a cheat, and that the means of redress are not with us. We are not authorized to go beyond matters of debt; this is an act of trover. The cloak is probably pawned, or sold. Could we have drawn a price from her, we had stood upon firm ground, and could have reduced your antagonist; but like an old bird of prey, she is too cunning to be caught. You have lost your cloak, and she her character, if she had one to lose. You are defrauded under the mask of friendship. Of all the species of ill-treatment, that against good-nature is the least pardonable.—By a wistful look, you seem still to wish our assistance; we would gladly give it. The case is well understood; but although it lies in a narrow compass, our powers are too circumscribed to reach it. We are obliged to dismiss the cause.

XIX.

The Gardener.

Two men may be friendly in making a bargain, both have upright intentions, carry that bargain to the very conclusion, but when one comes to
close

close with the other, instead of paying in cash, may pay in subterfuge.

A person held some land, who was solicited by a gardener to let him a small part for potatoes. They agreed that the gardener should have as much as he *used*, at the rate of 5l. per Acre. A plat of ground was fixed upon, staked out, and measured.

The gardener, whether for want of fetts, or for what other reason did not appear, occupied only a part of this plat, the other lay waste, without bringing a profit to either.

The proprietor demanded rent for the land laid out; the gardener insisted he had right to pay for no more than he used, according to agreement.

Court. Your bargain divides itself into two parts; by the first, you were to pay for what you used. But afterwards, a certain portion is staked out, and agreed to be appropriated to your use. Here the first bargain ceases, or rather, is included in the second. After the land was marked out, it was your's, he had no right to take it from you, and if you did not use it, the fault was your own;
your

your taking it, prevented his using it. If you take a house, you must pay rent whether you occupy it or not.

XX.

The Cockers.

The more a people are civilized, the less they are addicted to cruelty.

The dignity of the mind should never be lost; it cannot be supported by pride. A man preserves this dignity, whose poultry would feed without fear from his hand; who can throw aside the word seventy, and play at taw with his grandchildren. Who injures none, either in person, character, or fortune; whom neither the rational, nor the animal world can accuse of wanton punishment; who gives pleasure to another, without diminishing his own.—But he who ties the broken sauce-pan to a dog's tail for the pleasure of hearing him rattle through the streets, with a hue and cry after him; the butcher, who plays with his knife in the wound, after he has stabbed the pig to the heart, and the driver, who lashes his horses, for the pride of gracefully smacking the whip, are but one remove from the brutes they punish.

Cheatam

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Cheatam laid Filch half a crown that such a cock would win the battle. They deposited the money in the hand of Clench. Cheatam supposing he had a right to the five shillings, demanded it of Clench, who declined payment, as a dispute arose, till the parties had agreed which was the winner. Cheatam impatient of delay, sued Clench for the whole.

Court. It is displeasing to behold the man, who should protect the brute creation, become their destroyer. He who lays a wager, does a foolish thing; he who lays it in blood, does a worse. By spiriting up two innocent animals to kill each other, you encourage gambling, idleness, dissipation, and quarrelling. Pleasures are as necessary as food, but they should always be inoffensive. We would not determine these frivolous suits, but merely for the sake of putting a period to contention. You ought to be left, like the animals you punish, to tear each other to pieces. The wager shall be drawn, and the expences of the suit, which are eleven-pence, be jointly paid by those who laid the money. Do you, *to Clench*, return each man two shillings and a halfpenny, as a remembrance of his folly, and we will dismiss the cause.

XXI.

A. B. C.

The world is a mask. He alone is fit for busy life, whose keen eye can see through the disguise. We do wrong things, and call them by wrong names. As I had no intention of writing down the trials, when they happened, I have forgotten the names of the parties, I must therefore, supply their place with the old fashioned letters A. B. C. letters that often made us sick in our childhood:

A poor widow sued A. who was a young woman, and a beauty. She pleaded her marriage, and that, as a wife, she could not be sued.

It was proved upon the trial, that she had been under a contract of marriage to B. a young fellow. They had been asked in the church, and had enjoyed all the privileges of a husband and wife. Her charms, however, could not fix the rover. He wished to dispose of her to his friend C. As A. and B. had been recently asked in the church, it was thought *that* asking would serve C. and A. by which an expence of time, and of
K money,

money, would be saved. C. therefore, in his own person, married her in the name of his friend B. C. exactly followed the footsteps of his predecessor, enjoyed her, and left her. She was sued in the name of C.

The Clerk of the Court, and the Bench, rather differed in opinion. He alleged, that she had been really married, consequently was the wife of somebody; that the man to whom she was married, must be her husband, and that a summons must issue against him.

Court. That she is not married to the man to whom she was asked in the church, is plain, for he never appeared at the altar, nor did he commission any one to marry her by proxy, and we suppose, if *Madan* himself was upon the Bench, he would scarcely fix her upon him, for it does not appear, this is her first connexion.—That the second is not her husband, is as plain, for he put a trick upon the church, by lending a person which had no business there, and by counterfeiting a name he had no right to use. This she connived at, for the shadow of a husband, a name precious beyond every name, to a girl of warm passions, and of flimsy virtue. In the dear name *husband*, is included every blessing, till that husband is procured,
and

and then every blessing is wanting.—No banns had been published; if the register, which is the test of marriage, should be subsequently examined, the man at the altar could not be found in the book; and the name found, belonged to, a person who was never there. If a couple are not married according to law, they are not married at all. Though she is brought here in the name of a husband, we cannot consider her a wife, therefore, must dismiss the cause. Had she been sued in her own name, we could have proceeded with safety.

XXII.

The Butchers.

The religionist divides the world into two classes, the christian, and the hypocrite; the philosopher divides them in two by other names—the honest man, and the knave. If a man has property, or industry, he can support himself, is under no temptation to defraud, but is deemed the honest man. If he has neither, he must still be supported, but it is generally by preying upon others; this brings him under the description of the knave. Idleness makes poverty, and poverty the rogue; and here we open upon a wide defect

in our legislation ; we punish for those crimes we might prevent.

One would think the united ignorance of man, could not point out a worse method of treating criminals than that practised in England. If the young urchin commits a fault, he is held up to public view, his character is forever blasted, and himself committed to prison, where he is confirmed in that idleness, which first induced him to be a rascal. He had but little inclination to subsist by labour, and a prison cuts off that little. Here he associates with none but those who, having lost every idea of rectitude, quickly reduce him to their own standard. He enters only an *imp*, but comes forth something like a *devil*. The very means used to *cure* the rogue, confirms him. Practised in iniquity, he never thinks of joining society but to plunder it. *He goes about*, not so much like a *roaring lion*, as a silent one, *seeking whom he may devour* ; and as every animal produces its like, he, in turn, propagates his vile species, before an end can be put to his career.

Public punishments, short of the halter, seldom cure the culprit ; why then is not the evil rather prevented than punished ? If a character is lost by ill-treatment, the community are more culpable

able than the offender. If he might have been preserved, and is not, the error lies in the system of jurisprudence : if through extreme depravity of temper, he cannot be saved, let the fault be wholly his own.

Instances are very rare of people breaking the laws of their country, who are inclined to industry, consequently idleness is the root of mischief. Every prison, and I might add, every workhouse, ought to be accommodated with cells, and every cell furnished with implements for labour, where the rude inhabitant may be abstracted from society; this would preserve the man, the character, and the property. Notwithstanding their enormities they are the children of the state; if, through want of prudence, children are unable to guide themselves, they ought to be guided by others. Were a proper conduct extended towards these unhappy people, the cart might be better employed than in carrying the naked rogue and the rod. As no man was ever mended by the stocks, the whipping-post, or the pillory, those ancient manorial trophies ought to expire in a blaze; nay, even the gallows itself might be curtailed. If one man robs another, he offends against the public, because that offence might have been committed against any other. His punishment,

be it of what nature it will, is supposed to satisfy the public, but this no way repairs the loss of the injured person. His imprisonment hurts himself and his country, upon which he lies as a dead weight without benefiting any. But if the overplus of his earnings, went to reimburse the man he has robbed, justice would be done to all.

By forcing the indolent into employment, we save the property of one, and the life of another. The more of a man's time is taken up in useful pursuits, the less remains for mischief, and the more the temptation is diminished. An aversion to labour may be conquered. Stender diet, and solitude, will reduce the most obdurate temper. There is as much necessity to put the rascal under the direction of an overseer, as the pauper. Teach a man to labour, and you teach him to be honest. I saw, two months ago, a youth of fourteen, strolling the streets in rags and idleness; I saw him one month ago flogged publicly for theft, I saw him again yesterday, Aug. 19, 1785, carried to prison for fresh crimes. Could society have found a way, and the way might be found, to initiate this youth into labour, and continue him there, they might have saved an abandoned character, preserved the property of a hundred persons, and perhaps the youth from destruction.

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Parsons sued D—— for fourteen shillings. They were butchers. D—— had bought a side of beef of parsons, and as he could not carry it away at once, it was agreed to divide it, and that D—— should pay for every part when he took it. A small piece being left, D—— desired Parsons to send it, and he would pay the bearer ; but when he had got it safe in his shop, he would neither return the meat nor the money.

No cause ever came before this Court, nor any other, but would bear a dispute. An attorney of eminence, bent down his abilities to take up this dirty cause for the defendant. He alleged, that D—— was only a servant to his brother, of the same name and trade, that if he contracted a debt, it was for his master ; and that the master received the meat, sold it, and was possessed of the money, therefore, *he* was the responsible man.

Court. It appears, that while the bargain was negotiating, the brother was never mentioned, that D—— treated in his own person, offered himself as the responsible man, and Parsons accepted him as such. It is of no consequence who received the meat, or sold it, Parsons has no claim except upon the buyer, whom he seems

to have perfectly known, when he declared, "the
"meat shall not leave the shop without the
"money." We shall not enquire which of the
brothers was master, or which was man, we know
so much of their characters, that we can easily be-
lieve they are master or man as suits their pur-
pose. We shall decide for Parsons, and leave the
brothers to regale on the profits of the beef,

XXIII.

File Dust.

Take that heap of file-dust, says a master
buckle-maker to one of his people, sell it, and
let the produce be spent among the men in the
shop. He sold it for four shillings and eight-
pence, but chose to *keep* the money. Soon after,
he left his place, when, at their last reckoning,
the master stopt the four shillings and eight-pence
out of his wages, for which the man sent him a
summons.

Court. Who is in possession of the money?

Master. It was delivered to the people of the
shop, who spent it.

C. When

C. When the master had given it away, it was no longer his. It could not be the man's, he was only the hand through which it passed; he could neither keep it, nor the master recal it; consequently it must be the property of the shop. He may be considered as a carrier employed by the master to convey his goods to another, and it rests with him to see the service performed, or the loss must be his. As the shop did not employ the man, they have no claim upon him, but on the master, it follows, he had a sole right to take the property into his own hands, that it might be conveyed to its owners. Had the master kept the money, the shop might have sued him, but the man could not.—We shall dismiss the cause.

XXIV.

The Servant and his two Masters.

Two men, like two eyes, though differently situated, point to the same object, self-interest. One man hovers between right and wrong, without knowing where to settle, till at last, revenge preponderates the balance; another seems satisfied if he can secure his property upon a safer footing, although that security is only imaginary;

nary ; and a third, if he can ward off the evil of the present day to a future ; all act from this motive, all deceive, and are deceived.

Hodgetts worked as a journeyman with Higgins, ran forty-five shillings in his debt, and left him to work with Meadows. Higgins applying for payment, the three parties agreed that Meadows should stop two shillings a week out of Hodgett's wages, till the debt was discharged. Hodgetts left Meadows when he had stopped eighteen shillings, which, instead of giving to Higgins, Meadows paid back to Hodgetts. This verifies the old adage, *Two of a trade disagree*.

Higgins, ill advised, sued Hodgetts for twenty-seven shillings, and recovered. He then sued Meadows for the eighteen. Meadows alleged, he never promised Higgins payment, that he got nothing by the debt, and that he considered the money deposited in his hands, as Hodgetts's property, for it had never changed its owner.

Court. When the agreement was made between the three parties, it was only a bargain of honour. Hodgetts was not obliged to pay Meadows, Meadows could not compel him. Higgins could not oblige Meadows to pay, he had only made a conditional

ditional promise, for he could not tell whether Hodgetts would continue with him, or even live, or earn money enough to leave in his hands. Had that promise been positive, it would have bound Meadows. Higgins began at the wrong end of his work, when he sued Hodgetts, for in him rested his whole security: in suing him for a part, he has cut himself off from the remainder, if he miscarries in this suit with Meadows, for he cannot claim a second time upon Hodgetts. As Hodgetts consented to deposit the money in the hands of Meadows, it was no longer his, he could not demand it back; Meadows could not detain it, it was not his. While Higgins is unsatisfied, it must be his property: and as Meadows held it by the consent of three parties, for such a use, he cannot otherwise dispose of it, without the consent of those three parties. If, in the interim, Hodgetts had paid the debt, or Higgins forgiven it, Higgins's title to the eighteen shillings would have ceased, and that title would again revive in Hodgetts. We must make an order against Meadows, and he will find his remedy against Hodgetts.

XXV.

Warning.

Custom, by long practice, grows into a habit, and in time acquires the force of a law. It is then more tenaciously kept than the laws of a country; the reason is, that somebody has an interest in keeping it. If an ancient custom is good, it merits support; if bad, every means should be used to break it. Common justice is the touchstone by which it can be tried. No court is more likely to determine between a good and a bad custom, to support the one, and abolish the other, than the Court of Conscience; because the chicanery of corrupt law is not admitted, and they have only common justice for their guide.

One, among many bad customs, is the *foot-ale*, practised by the lower class, which initiates the young beginner into the early habits of drinking. Another is the *garnish*, when a culprit enters confinement. If he has no money, his clothes have been stript off his back; and though worth but little, have been sold for half their value, the money drank, and the prisoner left naked. The human brute, who performed this barbarous task, would,

would, if not prevented by law, have stript off his skin, could he have sold it for two-pence.

Another is the *fees*, at quitting the prison. If a man offends, he offends against his country; that country is bound to procure a place of confinement. It is contrary to the idea of rectitude, to force a man into a place, and then oblige him to pay for that place. If compulsion is used, he has no right to pay; if he pays, he has a right to chuse his place. If he is afterwards acquitted, punished, or pardoned, the law is fully satisfied; his country has no more demand upon him. It follows—the exaction of fees is a robbery, but with this difference from his own; he perhaps has robbed, and paid the penalty of the law; he is robbed, but without redress. Garnish, and Fees, with harpy claws, have made many attempts to steal into the prison belonging to this Court; but I am persuaded they will never succeed during the power of the present Commissioners.

The last I shall mention is the *barriot*; the barbarous remains of Norman slavery. When a customary tenant dies, the Lord of the manor enters the premises of the deceased, and seizes the best piece of goods, quick or dead, he died possessed of. One would think; from this cruel custom.

custom, our ancestors were strangers to pity, or that the laws had lost their protection. While the poor family are in the utmost distress for the loss of their leader, an animal approaches, in the form of a bailiff, with a heart as callous as his who introduced the custom, and adds to that distress, by plundering their small remains of property; he has been known to take an only cow, which the deceased was supposed to have hastened his death by labouring to purchase. The affliction occasioned by one death, augmented by the seizure of their best moveable, is sufficient to cause another. This vile custom originated from the Saxons, was carried to its altitude by the Normans, and is part of that wretched feudal system, which for many ages disgraced humanity.

There are customs which time has not fully ascertained, but are yet wavering, and are complied with or not, according to the honour, caprice, or expediency of the parties. Of this class is that of *warning* between master and servant.

A little smart girl of fourteen summoned her master.

Court. What is your claim.

Girl.

Girl. Five shillings.

Master. I owe her nothing.

G. It is for a month's wages at three pounds a year; he discharged me without warning.

M. There was no agreement between us, either for wages or warning.

C. For what reason did she quit?

M. My wife and she had some words, and as I thought her impertinent, I ordered her out of my house.

C. And if you order every impertinent person out of your house, will there be any body left in?

M. She is something in my debt, for my wife furnished her with some trifles of wearing apparel, expecting she would stay, but as she does not, I expect to be paid for them.

Court. The question of warning has frequently come before us, and as it appeared variously circumstanced, has been variously determined. It is not customary for the brick-layer, taylor, &c. to give, or take warning; we do not enforce it because neither are disappointed. A master in the Birmingham trades, has sometimes stopped his.

his servant's wages, for leaving him abruptly; but as warning, though perhaps eligible, was not practised, and as either side can generally supply the defect, we have not enforced it. But the case of servant girls in a family, like this before us, is different. Custom has in some degree introduced it, and common justice ratified it. We do not much enquire whether it was part of the original contract, we suppose it to exist. If the maid was allowed to quit her service at a moment's notice, how could the business of a family be conducted? Without the laborious hand, matters would quickly run into confusion. The mistress perhaps might attempt to do, what she is unable, and much would be left undone. Her necessity would force her to make a speedier choice than her prudence. She might find, to her sorrow, she had changed a bad servant for a worse, which brings her into the same situation, to the injury of herself, and disparagement of her place, in a fortnight.

Again, if the mistress could instantly discharge the maid, how could the maid subsist till another place offers? Necessity, in all probability, would put her upon dishonourable means to live, the least of which is, contracting a debt never to be paid. By a habit of idleness, she may be thrown
into

into the arms of a man, she would otherwise reject; if not, prostitution may follow, or, what is worse, theft. Loss of character shuts up every place against her, and opens the prospect of a miserable end.

But reasonable as warning appears, there are cases where it ought to be dispensed with, as, when a girl is famished, beaten, or otherwise cruelly treated.—On the other hand, the mistress may instantly discharge the maid if she is caught in an indecent act, keeps bad hours, becomes pregnant, is guilty of pilfering, &c.

In common cases, if the maid quits her place, the mistress has a right to a month's wages; if the mistress discharges her, the girl has the same demand, and this seems the case before us.

With regard to any little matters of perquisite received by the girl, if they were lent, they must be returned; if sold, paid for; but if given, as these probably were, they cannot be demanded back; whatever is given us, we have an absolute right to. We must, therefore, make an order in favour of the girl.

Second Example.

A servant maid quitting her place, the mistress desired her to recommend another. She communicated this intelligence to a young woman at Dudley, who came over, underwent the usual examination, was approved, entertained at three pounds per ann. and was ordered to deposit her apparel in her future bed-room.

While this was transacting, the old servant, hurt when the moment of separation came, at the idea of being supplanted, hinted to the mistress her wish to stay, which was complied with, and the Dudley girl, when she came down stairs, was given to understand, there would be no need of her service, and she might immediately depart. She sued for a month's wages. The Court observed, that the girl could make no claim for travelling from Dudley, that uncertain journey arose from her own choice, and must be supported at her own expence, in which the mistress had no concern; nor could she claim if the mistress and she had disagreed. But the moment one was taken into the service of the other, they were as much mistress and servant, as if they had been together

together a year. The bargain was fairly made, and must be fairly dissolved.

The mistress exclaimed loudly against the injustice of the Court. "They might as well pick her pocket, as oblige her to pay for service never done, and that she neither agreed for wages or warning." The Court entered an order against her with this remark: If the girl had voluntarily quitted your service after the agreement was made, and her cloaths deposited, we should have obliged her to pay you a month's wages; it follows, she ought to be paid.

Third Example.

After the experience of two days between a mistress and her maid, it appeared they could no more agree together than fire and water. "We will separate," says the mistress; "Then I will have a month's wages," replied the maid, "for the Court will allow it." "If you insist upon the money," says the other, "you shall earn it by serving the month. Clean the dairy." "I will not," she answered, and sat down to sleep, even in a storm.

Nine days elapsed, as boisterous as those in November, when the master offered the girl four shillings, which was rejected, and discharged her. She sued for the month.

The Court remarked, a servant refusing to do what was ordered, might not always arise from disobedience, for a mistress might command her to two employments at the same time, while she could not perform more than one ; but if she is to be paid and maintained, it is requisite, however, she should perform that one. A girl cannot claim for a month, except she labours that month. If she has a right to the master's money, he has a right to her service. As she did not chuse to work, we do not chuse to give her more than the master offered, and as the master made the tender, the expence of the suit falls upon her.

Fourth Example.

A case crowded with evidences, is not easily understood. Truth is cast away in a storm of contradiction. But those cases become plain, where the parties turn evidence against each other. Anger, unguarded, prompts them to disclose what they never intended. Here the Commissioners

missioners acquire more knowledge than they want. Although every assertion is denied, and truth and falsehood are blended together, yet they are easily distinguished. Every person has errors of conduct he wishes to hide, to divulge them in public, tends to destroy the confidence of friendship, the harmony of society, to create enemies, and compleat the villain. While a man supposes his character is not wholly lost, he will endeavour to preserve it; but if it is, no wonder if he becomes abandoned. The Commissioners, therefore, always curb the dealers in scandal, and object to every information, except that which tends to elucidate the case.

The master of a public-house, sued a youth for nineteen shillings. He allowed the debt. But having married a girl, who had lived seven months in service with the master, she charged him with a debt of eleven shillings; six of which was wages unpaid; she alleging their agreement was for three pounds a year, and he, only fifty shillings; and five for the month, she being instantly discharged. The parties grew violent.—He treated her as a cheat, and she boldly charged him with having an amour with two or three of his servant girls, whom she named. The

crowd enjoyed a real laugh at his expence, and he joined them with a forced one. The Court reprimanded her for revealing secrets which had no business there, and asked, whether his greatest crime might not consist in neglecting her? They further enquired, For what reason she was discharged? She replied, she accidentally caught her mistress in bed with another man, and published it.

Court. If you were caught in the same situation, would you wish it published? You acted against yourself, for while you kept a secret which hurt nobody, you made your mistress your servant; when you divulged it, you made her your enemy. You stood a fairer chance to cure the evil by silence, than by promulgation. Whatever servant betrays the important secrets of a family, betrays a trust which is highly culpable. Even truth itself must not always be told. Should every person's private transactions be laid open to the world, such a scene of confusion would follow, as never appeared since the days of Adam, that of the flood not excepted; for it would overwhelm the *whole* race; there could not be found even eight persons so fortunate as to escape the deluge. A man, conscious of innumerable errors, would

would be ashamed to be seen in the street—No—he might safely venture there, for none would be found to see him.

Whether the wages was fifty shillings, or three pounds, is not proved by either. This point, therefore, must be determined by our own judgment. As you seem by appearance, to merit three pounds, we shall allow it; but as you did not merit the month's wages, we shall not. Your mistress has a greater right to discharge you instantly, than you to demand the money. Though she was caught in a crime, her punishment was not with you. No servant is to injure the family in which he resides. The mistress has lost more by your tongue, than she can gain by your five shillings.

XXVI.

The Five Pound debt.

Our conduct is replete with contradictions.—We take one side of an argument to-day, and another to-morrow, according as fancy, or opposition directs. “With the same breath we cool our porridge, and warm our fingers.” We

call one of our debts less than it is, and another more, with the same view, to pay neither.

Thompson sued Foster for one pound nineteen shillings and eleven pence. Foster declared the debt was wrong, for he owed him more than five pounds, and as this Court could not take cognizance of forty shillings, it had no power over him. He claimed a dismissal,

Court. The defendants in this Court often deny their debt, with a design never to pay; you augment this for the same purpose. He grants you a favour by taking only forty shillings for a much larger sum. You ought to think yourself obliged to him, for giving you a full discharge for a trifle; but instead of paying him only eight shillings in the pound, you endeavour to deprive him of the whole. Had you been bred a miller, you would have followed the conduct of a predecessor, celebrated in an old song, "Who took the whole batch and forswore the sack." Your pleading an augmentation of the debt, discovers a principle you ought to blush at; it is a public accusation of yourself. You acknowledge you are not worth pursuing in a more expensive Court, and that your creditor, who per-
haps

haps knows you best, has a vile opinion of your probity, while, for so large a debt, he pursues you in this. As you seem conversant with the act, under which we sit, perhaps you may remember this clause, "The Commissioners shall have power "to determine in all cases; where the debt in *demand* shall not amount to forty shillings." As Thompson must have been a considerable sufferer by the length of credit, and reduction of the debt, you can do no less than make a speedy payment of the remainder.

Foster. I have a family of small children, and I wish the indulgence of the Court.

Court. We never willingly bear hard upon distress. We cannot think of punishing the innocent with the guilty. No pleadings prevail like the pleadings of those who are unable to speak! Your wish shall be granted, and the payments made easy.

XXVII.

The Two Guinea Club.

Public interest proceeds from private; they are both shoots from self-love. Private interest is the benefit of one, public of many. Take away the
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the first, and the second ceases. While we serve ourselves, we serve others. The farmer's *dame* serves the public while she sells her butter in the market, although her sole view is to serve herself. The man who buys a coat, designs no interest but his own; whereas, from that interest arises an emolument to every person, from him who first owned the fleece, to him who collects the last rag for a mop. To serve his country, is the patriotic watch-word of the senator, the interpretation of which is, *to serve himself*.

We herd together in little societies, and conduct ourselves by laws of our own making, for the good of all; but this general good is no other than the private benefit of each individual, for whom the rest become guarantees,

The lower class in Birmingham, sensible of their inability to save money for the greater concerns of a family, erect themselves into societies, under the name of *Two guinea clubs*. A publican is extremely solicitous to begin one at his house, and urges to his customers, "the great utility of depositing small sums in the box, which would not be missed in the earnings of the week, and at length receiving two guineas, which would answer any material emergency." The interest of
others

others is his plea, but the droppings of the spigot is his meaning. It might raise a smile, to hear of an institution, which is to teach the rudiments of frugality at a public-house!

Our golden society is formed, the landlord is constituted principal secretary, the members assemble once a week, spend two-pence, and drop a shilling into the box. When this box is able to yield two guineas, the members ballot, which shall receive it, and continue the practice till every member is supplied, when the club ceases. Here again we behold the picture of man; his private interest being served, he forgets that of the little public, to which he belongs; the stock being severed from the root, the branch withers.

A member sued the landlord for his share of the club-money, the time of payment being elapsed. The landlord declared he owed him nothing; that the member had never drawn his chance; that he had none of the club-money in his hands; and that it would be cruel to oblige him to pay with his own.

It appeared that the box was in arrear; that the members who had received their prize, slackened in their attendance and pay; and, being

served themselves, thought no more of serving others. It is only the injured that complain.

Court, to the landlord. Though it may seem unreasonable to you to pay that money you have never received, yet we are to consider, you are the father and director of the club; all operations pass through your hands; the members are neuter; they can only pay and receive their own money, and have no claim upon each other for non-payment. You must take care that one pays, and another receives his share. Perhaps it is owing to your neglect, that he has not drawn his chance. You can sue for arrears, and the members, unpaid, will claim upon you. Should a member die, or run away, after the receipt of his two guineas, the fault is not your's; the loss must be born by the society, or the bondsman; but if there is a remissness in collecting the subscriptions, you must be responsible.

How long is it since you ought to have been paid?

Member. A month.

C. The neglect is not very great, particularly if we consider, how difficult it is to collect debts of this sluggish nature. We will, for the present, dismiss

dismiss the cause, and charge the expence to the landlord. We advise expedition in recovering the arrears, or the evil, on a future day, will fall on yourself.

XXVIII.

The Master and the sick Apprentice.

There is nothing easier than for two men to keep a contract inviolate, while it is the interest of both. There is nothing easier than to dissolve it, when a dissolution becomes the interest of both. But those bargains are preserved with difficulty, where it is the interest of one to keep, and the other to break it; where dame Fortune, instead of preserving the balance even, throws her whole weight into one scale. The loser has been so much hurt in mind, by his contract, that he has lost a thousand pounds and a character to rid himself by law; while he might have entirely preserved one, and nine hundred of the other, had he sat down in silence.

As the great variety of trades practised in Birmingham, require a greater variety of apprentices to support them, and as a dozen unruly cubs quartered upon a family would rather disturb its peace,

peace, it has long been a practice to take what are called *Out Apprentices*. The boy is regularly bound by indenture, as in other cases. A subsequent writing by way of defeasance, stipulates, that he shall continue with his father or friends, who shall find him every necessary, that his time shall be his master's, and that the master shall allow him weekly pay, beginning perhaps with three and six-pence, and rising every year of his servitude, till it shall amount to about eight shillings.

The indenture places a bar between the King and the master, for it prevents the King from taking the boy into his service. The defeasance, or what is generally called *the article*, is a bar between the master and the father. The master demands a certain portion of time, or of work, and the father, of money. The master may suffer if the lad is untoward, and the father, if he is idle.

A father sued the master for wages during the sickness of the lad, and for his funeral expences when he died. He affirmed the master was obliged by the indenture, to take care of his apprentice, and find him every necessary, and observed, as a proof of that obligation, the master had relieved him with money and other things, during his sickness.

Court.

Court. If there had been no agreement but the indenture, that indenture would have been binding, and would have fixed the lad and the expence upon the master. But by a subsequent indenture, the first, to a certain degree, is defeated. You may make nineteen indentures, and destroy them all by a twentieth. By the last, the bargain was simply this, the master shall give a trade, and a weekly sum; and the boy, in return, shall give a fixed portion of work, or of time; a failure on one side, no matter from what cause, demands a failure on the other. If the master, through dullness of trade, or from other reasons, has no work, he must still pay the wages, and at the same time will command the attendance of the boy; nay, he can place that boy under a temporary master, till things can turn in his favour. The master can demand no more than the work stipulated, nor the lad more than the wages. Nothing would tend more to the destruction of trade, than to oblige a master to pay for work that is not done, if the error does not originate from himself; nothing could more encourage idleness in a servant; order must fall to the ground, and ruin ensue.

As no action ought to lie in a case like this, we shall dismiss the cause with one remark; if the
master

master extended his kindness to the servant in sickness, he did more than he was bound, and what was much to his honour.

XXIX.

The meek Husband, and the bouncing Wife.

A man tinctured with idleness, and a woman with pride, attempt, like the spider, to feed on the vitals of others. There are two ways in Birmingham of supporting the necessitous, the contributions of the parish, and those of the sick clubs, which are numerous. The support of luxury is not to be expected from either. It is a burlesque upon charity, to maintain people in affluence with money drawn from the pockets of those, who are but just above want themselves; this is a kind of legal robbery. A reform is wanting, when the receiver fares better than the giver.

T. had long been member of a sick club; had long hung upon the box, and though a young man, seemed inclinable to hang for life. The club, considering him an impostor, and frightened at his being entailed on them for ever, withheld the pay.

Not

Not a Court-day passes without some club causes coming before the Bench; all consist of those who are willing to receive, but unwilling to pay; among others came the humble T. with his shewy lady. The Commissioners, from the appearance of his face, which is an index that points to the state of the body, as well as the mind, and from a certificate written by a gentleman of the faculty, made an order in his favour.

Elated with this success, Madam bullied the members, who in turn were determined to be rid of T. and endeavoured to omit receiving his weekly contribution to the club, that by six weeks omission, he might forfeit his right to membership; but the Court would not allow of any finesse.

T. or rather his wife, frequently brought the stewards to the Court. The Commissioners particularly enquired into his complaint. She was the speaker, he was composed of humility, and never opened his mouth but by her order. No material defect was exhibited, and Madam seemed rather to lose ground. The cause was continued for proof. Every means was tried in the interim to induce the Bench to give judgment in her favour. The Overseers stepped forward. Some

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of

of the faculty used their interest, which, as it was granting a favour to him, might be paid for by her. She even applied individually to the Commissioners, and stated, that she had *only* sixteen shillings a week coming in, seven from the club, five from the parish, and four from another quarter; that she could not subsist upon it; that she expected to be aided in acquiring more, rather than be deprived of this.

The Commissioners were surprized at the sixteen shillings a week, besides being possessed of a husband, who seemed able to labour, but afraid to be well. They replied, a cause seems too bad to support itself, that requires so much trouble to support it; that they were neuter in the case, that the matter would be tried by the laws of the club, by which she must stand or fall, and that they were not dealers in favour, by justice.

At the trial, Madam appeared all noise, her husband, all silence; if the club was loud, she was louder. The Bench frequently attempted to silence her, but they could as soon have silenced a pig under the butcher's knife. Their articles were produced, in which was one expressly declaring, "If a member was deemed an impostor, by any surgeon, he should be expelled the society."

"ciety." Two of the faculty were present; one pronounced, "he was well able to work;" the other, "that though he had a slight rupture, it "was very little impediment."

Court. We have given the case great attention. We have tried it by our own judgment, and by your laws. There is no reason why men, who can barely support themselves, should support others equally able. We shall dismiss the cause.

Madam opened—thunder was discharged from her tongue, and lightning from her eyes. Her face, round, red, and fiery, like a rising full moon in a clear winter's night, looked sufficiently heated to kindle a match. She surveyed the Bench as the Dragon of Wantley did Moore of Moore-hall.

As I well knew T. I could observe, that, being deprived of the box, he immediately changed his dress, discharged the air of sickness from his face, assumed a brisker gait, and turned his hand to labour. He appeared as much in health as other people. His countenance being rather pale, might be the case of any man possessed of a rampant wife.

XXX.

The Mistake.

Man is a defective being. To do wrong is inherent to his nature. The most perfect fall; nor shall we wonder, for in most cases there are many ways of doing wrong, but only one of doing right. This question naturally arises, When a man errs, shall he let the error pass, or repair it? The reader will readily answer for the latter, but before he comes to the close of this short case, he will find an objection to both.

Burt sued Maloney for six shillings; an order was made accordingly, but a month or two after, when Burt came to receive his money, he discovered a mistake, the order should have been *sixteen* shillings. He was advised to sue Maloney again, and try the sentiments of the Bench a second time.

Maloney did not deny but the debt might have been sixteen shillings, but pleaded, that he had undergone the sentence of the Court; that he had paid the debt awarded, and had a full discharge; that there had been no subsequent transaction between

tween Burt and him, that the determinations of the Court were final; that the cause could not be resumed either in this Court, or any other, therefore insisted upon a dismissal.

The Court, upon enquiry, could not discover how the mistake arose, but thought from themselves. They believed, that through hurry of business, diffidence in the plaintiff, his uttering the word sixteen with a faltering voice, and in a noisy crowd, they might not hear the syllable *teen*.

Court. We are not authorized to take up a cause after it is once determined; it is well we are not, otherwise there would be no end of trying causes; every disputable point would be brought on by the loser, without end. We had better move forward, though we make a few false steps, than repeatedly go over the same ground, which would never bring us to the end of our journey. The case before us is singular. If Burt did not commit an error, he ought not to suffer. As it appears Maloney owes the money, he ought to pay it. We do right in ordering the payment of a just debt, we do wrong in breaking the act. We shall abide by the consequence, common justice is in our favour.

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We

We have now committed an evil in departing from a law, an evil seldom comes alone, this leads us to the commission of another. This cause, which ought to have passed the board with one expence, is now chargeable with two. The Commissioners ought not to bear it, they never had any thing for their trouble. It ought not to fall upon the officers of the Court, they are innocent, their fees are small, and it is well they are. Defoloney must not bear it, the fault did not originate from him; we are obliged, though unjustly, to charge it to Burt.

To break an act, is of dangerous tendency, though a shrewd lawyer, practised in finding out crevices, through which his clients creep, might tell us, "the Bench committed no error, for instead of a decision, they had only made a part, if they through mistake gave the claimant but half his demand, they may with safety give him the other." But whether the Commissioners are justified, must be left to the decision of the reader.

XXXI.

Counterfeit Money.

Justice is represented blind—Equity might be so too, for she cannot find her place. Human penetration, in its utmost stretch, is unable in some instances, to determine with precision, nothing is equal to the task, short of divine. A Commissioner feels himself in an awkward situation, when he is presented with a case beyond his powers. He watches the disputants with the minutest attention, to discover an opening, where he can fix his judgment. Nothing offers. The air, the look, the manner of the parties in contest, which are above the power of words, will sometimes afford intelligence—Still he is in the dark. He dares not venture a rash decision, it is cruck. His judgment is hovering, like a feather in the air, and knows not where to settle. He may fly to characters, they are fallacious; he may administer oaths, they prove nothing; he wants information on facts; he only gets assertions, and from these he cannot infer—the abilities of a Thurlow must stagger.

T. sent to C. desiring he would change half a guinea. This was by candle-light. In a few minutes after the messenger was gone, the half-guinea was suspected; the next morning it was visibly bad, and returned. T. alleged it was not his, for it was too bad for any man to take but a blind one. After several messages on one side, and refusals on the other, C. brought him to the Court of Requests.

Court. The half-guinea, like other counterfeit money, perhaps is the worse for keeping. You have furnished us with a cause, but not with any means by which we can determine it. Truth lies in a labyrinth, into which we cannot find the clue. You are both people of fortune and character, we have no reason to suspect either of design, it may originate from mistake. No evidence appears; the scales are exactly even, nothing has occurred in the course of the enquiry, that could preponderate in favour of either. We have attended with care, but must leave it as we found it. There is only one narrow foundation upon which we can erect a judgment, the *oath* of the plaintiff, an edge-tool which should be used with caution; it is a species of that barbarous and uncertain custom of trial by combat; in one a man
brings

brings down his adversary by fighting, in the other by swearing, but in both cases, the merits of a cause lie hid as before.—*To C.* Are you so clear that this is the half-guinea you received from T. that you durst venture an oath.

C. I am.

Which being administered, an order was made in his favour; and this is one of those determinations for which I shall never be forgiven.

XXXII.

The Lovers.

We live upon the most intimate terms of friendship with another, we mix our property with his, we form in our minds an everlasting union, and fondly hope the happy season will never change. But ere long the day lours, the clouds thicken, and the jarring elements proclaim an inveterate war. If every thing is subject to change, love and friendship cannot be exempt. The closer the union, the wider the difference. There was a time when each kept the other's secrets, but now they are blazoned in the strongest light.

A decent

178 COURT OF REQUESTS.

A decent girl sued a young fellow for one pound nineteen shillings and eleven-pence.

Defendant. I owe her nothing.

Court. What is the nature of the debt.

Girl. It was money he received of me.

D. I did not borrow it, she gave it me.

C. You seem to have been upon better terms than at present; perhaps you had love in possession, and wedlock in prospect.

D. She wanted me to marry her.

C. And you wanted to rob her.

D. She gave me the money, and every thing she could give beside—(with a significant smile.)

C. Then she gave you what you did not deserve. If you have taken what you cannot restore, you ought to restore what you can. He who betrays his friend, acts beneath the character of a man; what then does he deserve, who without any motive but revenge, divulges in public, what ought to be kept inviolate? If your accusations fall heavy upon her, they fall with double weight upon yourself. Having no character of your own to destroy, you destroy another's. Instead of associating with women, you ought even to be hissed out

out of the company of men ; you have inverted the old adage, " A woman's a riddle, and can keep nothing." But it is in vain to cut the man without feeling. She parted with her money in confidence of a marriage, in which case it would still have been her own ; for whatever belongs to the one belongs to the other ; but this marriage not taking effect, and she may rejoice it did not, she still retains a right to the property. She was in your power, and you acted the wanton tyrant ; we shall put you in her's, by ordering a speedy payment.

XXXIII.

The Division united.

It is curious to observe the difference of opinions. If a subject is accidentally started between two people, which perhaps had not been thought on by either, one pronounces upon it, the other probably embraces the contrary side, not because it suits his sentiments, but for the sake of opposition, or of argument. It may be said they accidentally take a side, and *that* side suits best which is first assumed ; each might have taken the other with equal propriety. Each argues

argues till he is confirmed in the belief of what he before doubted, or perhaps never examined.— They proceed by slow, and *warm* degrees, till each becomes

“Mighty angry, mighty right.”

—When a moment's reflection would convince them of the folly of being strenuous in any point that is not universally believed; and if it is believed, there is still as little cause for exertion. If others entertain different sentiments, it affords the strongest reason to doubt our own; for why may not the judgment of another be equal to mine? He who warmly supports a question, disputable in itself, displays an unbecoming arrogance. Where the disputants are equal in rank, the contest may be carried on as long as the siege of Ostend, by the Spaniards and the Dutch, in the reign of Queen Elizabeth, and neither side boast the victory. But where one moves in an elevated sphere, and the other not, the latter, to his utter disappointment, must submit; this happened in the famous dispute, in full synod, between Henry the Eighth and Lambert the school-master. The powers of royalty, joined to a tolerable share of impudence, gave Henry an evident superiority. Applause was hummed to the King at every sentence. The incense of-
fered

fered by the priests turned *the head of the church*; and the poor schoolmaster was brow-beaten by the mitred battalions. He lost ground; and who would not, pressed, like him, by the united force of the church and the crown. It appeared at the close of the contest, that the cogency of Henry's arguments gained a decided victory, for he ordered the poor schoolmaster to the flames.

A plaintiff, who sold necessaries, charged a debt to the defendant, which he denied. The defendant was a brick-maker, and during the winter season, his master had said to the plaintiff; "The defendant can only get clay, consequently his wages are small; trust him with what he wants, and I will see you paid in the summer." The plaintiff gave credit; the defendant *said* he had paid the master, who was broke and ran away.

The Bench were divided in opinion, whether the defendant was chargeable with the debt? It was argued on one side, that the plaintiff, by taking the master, had relinquished the man; that he sold the goods upon the credit of the master; that he would not have trusted the man; consequently his dependence was not upon him; that

that as the man had paid the master, if he should pay the plaintiff, he would unjustly pay twice for the same goods.

An opinion once adopted, cannot easily be given up. The question is interesting; the field of argument is wide, and two warm disputants, might sophistically battle it out by the year, assisted by all the auxiliary tomes of the schools, from Aristotle to Thomas Aquinas, and from him to the present day.

It was urged on the other side, that to destroy any security which a man holds, in defence of his property, is a dangerous attempt; that as he had parted with this property, he ought to be assisted by every just means to regain it; that there might be collusion between the master and the man, to deprive a third person of his right, a practice of vile tendency; that before any judgment could be given, it would be necessary to determine, how far a promise binds the master, and frees the man, or how far it holds both.—Should the master say to the plaintiff, “If you chuse to trust the defendant, I will endeavour to stop the money out of his wages, and pay you.” This is the slightest obligation we can conceive, or rather, is no obligation at all, ex-

cept

cept in honour ; it leaves the master free, and the man bound. If he should say, " Trust the defendant with what he chuses ; do not charge it to him, but to me ; I will pay you." This is the strongest assurance he can give ; it binds the master, and sets free the man ; and perhaps nothing short of *this* can free him. Between these two extremes, there is a point at which they are both bound. If the master says, " Trust him, he will pay you ;" though this is a positive assertion, it is not binding. If he says, " Trust him, you shall be paid ;" here they are both bound ; or, " I will see you paid," amounts to the same ; and this is the expression before us. Whether he pays money to the master, or not, is nothing to the point, or the plaintiff ; it is only a private act between themselves, which no way affects the case. The defendant bought the goods in his own name, and used them ; the plaintiff has a natural right to him. By taking the master, he only adds to the security of the man, which was too weak without it. If the defendant actually paid the master, which, by the way, is much doubted, it was an act of his own, and the master is responsible to him for the money. As the plaintiff had no hand in that act, he ought to have none in its consequences.

The

The Court, contrary to the usual result of disputes, unanimously decided for the plaintiff.

XXXIV.

The Brothers.

It is our interest, as well as our duty, to forgive. We cannot torment others, without being tormented ourselves. If we put an end to a quarrel by agreement, we at least restore peace to our own mind.

“Would you advise me,” says a stranger, “to put such a one in the Court? He owes me money, has used me ill, and I wish to make him suffer.”—I never advise one man to proceed against another; if I did, that other would become my enemy, and perhaps use me ill.—The Commissioners wish to do justice, but they cannot become ministers of vengeance in any man’s quarrel.

“Sir,” says an elderly person, “my son has put me in the Court, and I beg you will not admit his oath, when the trial comes on, for he is a bad man, and will swear any thing.”—I do not attend to Court business at my own house;

house ; I am a stranger to both, consequently can say nothing against either ; but I should suppose, *he* is not a good man, who could make such a declaration against his son. He who can quarrel with his son, proves himself capable of quarrelling with all the world ; nay, there is but one remove in his power—to quarrel with himself!

Whether the remark had any effect upon the father, is uncertain ; but the action was withdrawn before the Court assembled.

Richard Stanton sued John Stanton, and both appeared eager for dispute.

Court. You are both of a name. Are you brothers ?

“ Yes.”

C. You seem to have had a difference ?

“ We have.”

C. And so this suit is the result of a brotherly quarrel. You hurt your own minds, if those minds have any feeling, by differing with each other ; and you hurt your reputation, if such exists, by proclaiming it to the world. He sleeps the soundest, who is at peace with man. If all is calm without his breast, it is probably so within.

N

Your

Your acquaintance will shun you, and be ready to say, "If they who are brothers cannot agree with each other, how can they agree with us, who are strangers?" Of all quarrels, those of the family should be avoided: none sting so deep. If we have any skill in physiognomy, which by the way is a precarious science, you [*to the plaintiff*] seem to be the aggressor; we advise you to make up the difference, and suffer us to put an end to the action.

Plaintiff. He has used me ill, and I will have my money.

C. If he has used you ill, the best revenge you can take is to forgive him. Nothing would so agreeably surprize him; you "draw him with the cords of love;" you conquer with kindness. Did you ever read the New Testament?

P. Yes, many a time.

C. Do you remember this remark, If thy brother offends thee, forgive him, even unto seventy times seven?

P. I have forgiven him oftener than that.

C. But there is one pardon yet behind. The simple meaning of the words are, never cease to forgive. How long have you been at variance?

P. We

P. We drank tea together as friends last Sunday.

C. Then drink tea together as friends next Sunday, and all will be well.

The Court not being able to effect peace between two quarrelsome brothers, enquired into the claim. The plaintiff declared it eleven shillings, the defendant five. After examining some blind accounts, fabricated in wrath, the debt appeared to be seven shillings and six-pence, which they ordered in small payments against the defendant, and left the two irascible brothers greatly dissatisfied, because neither could glory in victory.

XXXV.

The Transfer.

The easy method of recovering property in this Court, has excited non-residents to qualify themselves as suitors. This is done by renting an apartment, in which they deposit something of value. Several of the Commissioners have taken great umbrage at this practice, "because," say they, "it is evading the act; they are only residents for an hour, to serve a turn, or rather, not residents at all. Perhaps the chief apart-

“ment occupied by these flimsy tenants is that
“where the Court is held. If you wish to serve
“them with a summons, where will you find
“them? Besides, no man ought to sue, but he
“who is liable to be sued.”

Unanimity is the very life of business; every man should court it. It is always with regret that I differ in opinion from a brother.—But I would reply, a Commissioner may take his station on one side of a question, set his face against the other, and bear down all before him; he may wantonly dismiss the causes he has a right to determine, and which would do the suitors a service, and himself no discredit.

If a man takes premises of any kind, from a palace to a hovel, no matter for what purpose, he becomes a tenant in the manor, and is entitled by the act to the privileges of the Court. A lady lamented, that though she had great property in Birmingham, she could not recover from her little tenants, because she resided a few yards out of the liberty, and wished to know, whether that small space could be dispensed with?—No, Madam, you might as well live ten miles off, as ten yards. But you are an inhabitant already; for, to my knowledge, you rent a seat in a place

of worship, which, in spite of all the sophistry of Westminster-Hall, gives you the right you want, — If the Commissioner wishes to adhere to the act, and he cannot tread upon safer ground, he must admit the temporary suitor. Nor can any evil arise from the admission; for as every man is amenable to the laws of his country, he is liable to pay his debts; it follows, all the difference between the real and the sham resident is, one can recover his property at less expence than the other, and it is better that one only should be eased of a burden, than neither. Besides, as a man will never become a temporary tenant for the sake of being sued, all the advantage lies in favour of the real resident, for as he must pay the expence of the suit, the less that expence, the better. But let the Commissioner examine whether his refusal does not arise from a littleness of mind? He presides over a repast of which he will not suffer the stranger to taste, although there is plenty, and he is no where forbid,

A plaintiff claimed a debt, which the defendant denied: in such a case, the Commissioner may easily find time to lay down his pen and his spectacles by way of respite, while a contest takes place.

Plaintiff. The debt was contracted with Mr. Such-a-one, who turned it over to me.

Court. Had you the consent of the defendant ?

Defendant. No.

C. Does Mr. Such-a-one reside in Birmingham ?

P. No.

C. A debt cannot be transferred without the consent of three parties, the debtor, the creditor, and the person to whom the transfer is made. Neither is a verbal transfer perfectly safe, because words may easily be denied or forgotten ; all three might privately acquiesce when together, but if any one denies it before us, our power ceases. If Mr. Such-a-one was a resident here, he might give you the debt by suffering you to sue in his name ; or, as he resides at a distance, if he draws a bill upon the defendant, payable to you, or order, and he accepts it, the right of suit becomes your's. But as the debt now stands, there are two obstacles in the way, which we cannot surmount, the debt is vested in Mr. Such-a-one, and he is not within the limits of the Court.

XXXVI.

Law and Interest.

Our honesty and our laws are kept or broken, according to our conveniency. We do not bend our conduct to the laws, but the laws to our conduct. While it suits our interest to be honest, or to keep them inviolate, we comply; but no longer. Nothing was intended to bind like law, but nothing really binds like interest.

A member of a sick club sued the stewards for one pound eight shillings, four weeks pay. They declared he was not a member. It appeared by their articles, which ought to be the criterion of right, that the club assembled once a week, that every absent member forfeited a certain sum, and by non-attendance for six nights, he forfeited an accumulated sum of about seven shillings, and his right to membership,

When this man had absented himself till the arrears swelled to eleven shillings, he applied to the club, solicited to be taken in, and agreed with the members present, that he should be reinstated, paying all arrears. Being in health, it was their interest to keep him,

Elevated with ale and prosperity, which often raise a man above himself, instead of paying his arrears, he d—d the club, and declared he would leave them.

He was immediately taken ill, and applying to the club, insisted upon his right of membership; but the scale was now turned, it was their interest to shake him off, and his to adhere to them.

As he was likely to become burdensome to the parish, the overseers interested themselves in his favour, offered to pay the arrears, and wrote to the Bench.

Court. Every society of men is governed by a body of laws of their own; nay, it is that body which constitutes them a society; you must *obey*, and we must *try* by these laws. It does not appear that a member can, by absence, contract a debt of more than seven shillings. When this happens, all connexion ceases. Though the members in full assembly, may, by their majority, make bye laws for the good government of their body, yet they cannot make one new, or abrogate one old law, without the consent of every individual. If this was allowed, a cabal might be very mischievous in voting away a man's right or property. In the words

words king, lords, and commons, is comprehended every person in the kingdom. They can, by their joint consent, alter, form new, or annihilate old laws, but no alteration can take place without the consent of the whole body. The king and the commons can make none without the lords, nor the lords and the commons without the king. Each can make bye laws for their own good government, but no fundamentals can be created without the whole. 'As every law affects somebody, it cannot be carried without the consent of that somebody. As this man had forfeited his right by non-attendance, his share of the fund became the joint property of every member, consequently, the consent of every member was necessary to reinstate him. Each man might give back his own, but no man could give another's; it follows, his being revoted into the club by a majority, and his d——g himself out, no way affects the case; he had lost his right prior to either. Instead of a claim upon them, they have a just demand upon him for seven shillings, as arrears for non-payment.

XXXVII.

The Raffle.

An intimate acquaintance assured me he had seen an Englishman, who visited the Spa in Germany lose 10,000l. in a few hours after his arrival, before he had time even to look at the waters. Whatever follies he was chargeable with, idleness could not be one.

I have never seen a gaming table ; but I fancy there must be some thing *immensely* curious in the aspect of those that surround it. The whole attention is summoned to the face, which, like an index, points to profit and loss. The mind, in her minute operations, is seen in its native state. There the most artful find it difficult to put on disguise, or rather, forget it through extreme attention. The exact boundaries are ably marked out, between expectation, success, and disappointment. The passions, which are called into the features, operate with freedom, and may be seen by all but him who feels them.

I saw

I saw and conversed with a clergyman at one of our watering-places, who read prayers to the company in the rooms. The collection one Sunday amounted to seven pounds; "that money," whispered one gentleman to another, "shall be mine in two hours." When the book was closed, and laid upon the shelf to sleep for a week, and the cash deposited in the pocket, to be called out at a moment's warning, Parson says the gentleman, will you go the billiard-table? "Yes, Sir." They went, and it proved as predicted by the gentleman. But though the parson made queer faces, while the returns of prayer were unsuccessful, yet when he had parted with the gains of godliness, he bore it like a philosopher; to be shabbed was nothing new, he had often lost every thing he had, but himself.

The itch for gaming is predominant in every rank among us. There is an unaccountable pleasure in changing a certainty for a chance. If a man has a few old household goods that lie heavy upon his hands, the refuse of a broken mercer's shop, or a horse fit for the dogs, he publishes a raffle. The propensity to gaming, joined to his own little interest with his friends, will probably help off his tickets. The idea of having a horse for a shilling, whose very hide is worth

worth eighteen-pence, is a powerful motive to venture. The strong desire to win, gives rise to unfair practices, and these, to everlasting disputes. The disputants in higher life appeal to the sword, in lower, to the Court of Requests, and, for want of that, to the fist.

Rossiter sued Wheeler for 1l, 18s. 11d. Wheeler replied, that Rossiter held a watch of his, value three pounds. It appeared that Rossiter owned a watch, which he put up to be raffled for, and had solicited Wheeler to take a ticket. They had agreed and fixed upon the number. That ticket happened to win the watch. Rossiter declared, that as Wheeler had neither paid for the ticket, nor received it, he should have nothing to do with the prize, but as the ticket was in his possession, he would be the winner himself.

Court to Rossiter. As a bargain cannot be made without two persons, it cannot be broke without two. Wheeler has hitherto broke no part of his bargain, consequently, you can break no part of your's. Had you agreed for ready money, he would have failed on his part, and the watch would have been yours. You fairly sold him the ticket, though the time of payment was not mentioned. The agreement was firm, though he
had

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had neither paid for the ticket, nor possessed it, and had it been drawn a blank, he would have been responsible to you for the purchase money, which you might have recovered in this Court. We cannot make an order for your 1l. 18s. 11d. except you deliver the watch.

R. Wheeler's credit is too bad to allow me to change a certainty for an uncertainty. Your orders cannot oblige a man to pay money who has none. The credit of a gambler is base currency.

C. Has any artist valued the watch?

R. Yes, and rated it at nine shillings.

W. I will not take thirty for it.

C. to *Rossiter*. Was it fair in you to puff forth your watch at three pounds, which, by your own confession, was valued at nine shillings? We shall make an order in your favour for 1l. os. 11d. you shall deduct eighteen shillings for the watch, and promise to keep it one year from this day, during which, you shall return it to Wheeler, if he ever tenders you the eighteen shillings.— Both were satisfied.

XXXVIII.

Landlord and Tenant.

It is entertaining to contemplate the gradation of things; to behold a first cause, of no moment, produce a second, that second produce a good, that good an evil, and that evil a remedy: every link, in the chain of events draws forward, and terminates in the next.

The manufactures of Birmingham require an amazing number of people to conduct them, and though their wages are from ten shillings a week to two guineas, yet they are as poor as the common labourer, who earns but eight. Imprudence is the characteristic of this class. The few that are otherwise, soon become masters, and rise to fortune. This prodigious number of the lower ranks, require a proportionate number of small houses for their accommodation. With these we abound. The landlords can readily let their houses, but they loudly complain their rents are ill paid. The man who melts down his weekly income, has but little left, besides promises, for his landlord. A distress cannot be taken, the effects
would

would not pay the charge. Riches are said to give power, but here the case is reversed, for the poverty of the tenant is his security, and gives him a power over the landlord. Of all the men we contend with, he is the hardest to conquer who has nothing to lose. The laws of England point out but one way to recover the landlord's premises, by ejectment, and this he dares not pursue; the whole expence would fall upon himself, besides having the wretched chance of placing them in the hands of another of the same stamp. After he has experienced evil upon evil, without a cure, he flies for relief to the Court of Requests. In this Court, if properly authorized, a man might find that universal nostrum for his property, which is vainly held forth by the faculty, for his health.

Court. What is your demand?

Landlord. As much as the Court can allow. He is my tenant, and will neither pay rent, nor quit the place. I would forgive the debt if he would grant possession.

C. Why do not you pay the rent?

Tenant. I have no money.

C. Why do not you quit the house.

T. I cannot get another.

C. By not paying rent, you act against yourself. No landlord will let you a house that knows it. Can a man lay out his money in purchase, submit to repairs, discharge parliamentary taxes, and have no returns? We live *by* one another, and it is requisite we should, but we are not to live *upon* another. If you will quit the premises directly, you shall have your own time to discharge the debt; if not, we will make an order for immediate payment, in which case, you will instantly be committed to prison.

T. Give me one week, and I will quit.

C. You shall have it.—There are, *to the landlord*, three ways before us. If you can take your tenant's word, we can make an order in small payments, which will favour him, if not, we can continue the cause a week, for six-pence, to see if he fulfils his promise; or, we can make an immediate order for the whole, but in this last case, you must give *your* promise, that you will not hurt him if he performs his.

L. I will take his word.

Second

Second Example.

It requires a tolerable capacity even to *ravel* a cause in law, but very small abilities will decide it in equity. Law is at best, but a crooked path, and a man of talents can easily make it more crooked, but it is the province of equity to make straight. Knotty points are difficult to determine. A man quickly finds himself in a labyrinth, and the farther he penetrates, the more he is bewildered, but equity has this advantage, she can generally solve her own questions.

It will be granted, that every man has a right to command his own property, otherwise it cannot be called his. If another holds a share in that property, each ought to command according to his share, neither of them can trespass on the other. Should the property be a freehold estate, the controul is solely in himself, but if he grants possession, whether by lease or otherwise, he admits another into a share of that controul. The bounds of power in each are ascertained by the covenants; when these expire, the whole power reverts to its owner.

Taylor, a gay young fellow, rented a workshop of Edmunds, an industrious young widow. She wanting the shop, desired him to quit, which he refusing, she sent him a written order to leave the premises, in three months, or pay double rent. This order being disregarded, she brought him to the Court.

He alleged, "as he had fairly taken the premises, he had a right to keep them; and as they had both agreed for simple rent, it could not be altered without him."—It was replied, that she having full power over the shop, had granted a participation of that power, by admitting him tenant at will. Had he possessed a lease, he might have enjoyed all its privileges during the term, but being only a temporary tenant, he could possess only a temporary privilege. He could not hold more than was granted, otherwise he would hold the property of another, and she lose the authority of an owner.—The Court asked their clerk, whether a landlord could legally charge double rent? who assured them, an act for that purpose existed, and its intent was, to prevent the dreadful expence of ejectments. The Court then remarked, as legal notice had been fairly proved, and as possession ought to have been delivered up
at

at the end of that notice, they should make an order for the rent demanded,

The tenant and his attorney became violent. "The premises should never be delivered up; they were suitable; the decision was unjust; and a remedy would be found in law."——But I have long observed, he who threatens to do most, does nothing.—The tenant asked the Court, whether he could continue possession under the double rent awarded?

Court. It is not our province to solve doubtful points of law; we leave them to the long-robe; but we apprehend, she may, after legal notice, still double her demands.—If you reflect a moment, you fall by your own argument; "you will not part with the shop, because it is useful;" you forget, the same reason operates with her, but with double force, because she has a right, and you have not. Should the cause come again before us, you may expect the harshest sentence ever awarded by this Court; for we deem it a fundamental maxim, if one man holds the property of another against his consent, has power to restore it, and will not, he ought to be punished till he will.

XXXIX.

The Tenant, mistaken.

Common usage among men, and the practise of the courts of law, vary with time. What was stedfastly retained, is now kicked out of court as a troublesome question. The laws of a country should equally favour every class of men; but formerly the tenant had much the advantage of the landlord, who could not discharge him from his premises without regular notice, while the tenant could any quarter-day deliver up the key with his rent at a moment's warning. It was alleged, in favour of this unequal practise, that the tenant, whose bread depended upon possession, might, by the caprice of a landlord, be instantly turned into the street, and lose his subsistence.— But they forgot that the same argument holds good with the landlord. If the tenant is allowed to quit instantly, how can the landlord provide himself with another? How must he be supported, if his dependence, which is often the case, lies upon the rent? Or how can he pay for repairs, and discharge the taxes? Modern practise, however, to its honour, has placed them on a level; neither

neither of them can separate without reasonable notice—it follows, what is reasonable notice?

A landlord sued a tenant for a quarter's rent, due at Midsummer. The tenant denied the debt, for he had paid and quitted at Lady-day.—The Clerk of the Court observed, that no tenant could quit, except at that quarter-day on which he entered. That if he took premises at Midsummer, or any other day, he became tenant for one year, and when that expired, and he entered upon another, he was bound to the end of that also, and continued bound as tenant for a year, during every year of occupation, and whenever he quitted, must give prior notice; that this was the modern practice of the Courts above, under the lords Mansfield and Loughborough, and ratified the argument with a quotation from Blackstone: that if the tenant before us entered at Lady-day, the landlord is entitled to a whole year's rent, instead of a quarter's.—The Commissioners perused the quotation, and though the Bench and the clerks generally agree in sentiment, they did not exactly see the case in the same light. They thought it was not perfectly in point. A commentary may require a commentary. The word tenure is copious, and divides itself into too many branches to be explained in a short compass; neither did the

passage exprefs whether a whole year's warning was requisite, or only a part. Law and equity, which should ever be the same, often vary. If the Commissioners cannot decide *against* law, they can decide without it. Their oath binds them to proceed according to *good conscience*. Common justice is understood by an ordinary capacity; it seldom requires a commentary. A man only needs information to be able to decide. Though the Bench pays the utmost deference to the judgment of the great names above, yet they are not to give up their own. There is no occasion for either common, or statute law, to prevent injustice, where no injustice is incurred. One quarter day is equal to another, in letting a house, particularly of the smaller size, therefore, if sufficient notice is given, neither can suffer. Lord Mansfield then could not have his eye upon this kind of tenure, when he determined in favour of a year. To suppose a house saddled upon a tenant, who takes, and pays by the week, is to suppose an absurdity beneath Lord Mansfield. If a man takes a farm at Lady-day, he must hold it one whole year after another, for if he is allowed to quit at Michaelmas when he has taken off the crop, the landlord would suffer; and this, I make no doubt, is the tenure their lordships meant, when they would not suffer the year to be divided.

But

But it is not yet determined what is reasonable warning, that warning which should equally bind both, where no particular bargain is made. As I have never seen a judgment upon this head in any of our law books, and as those on equity do not exist, I shall venture my own.

The length of time in which a landlord and tenant agree for paying rent, seems to be the proper length of time for warning, whether it be half yearly, quarterly, monthly, or weekly, except in a farm, and then the tenant, like the *anno domini*, must wind round the year. To suppose him who pays half yearly, to give a week's notice, and him who pays by the week, half a year's, is to suppose a double absurdity.

Court to the landlord. Did you make any advantage of the house during the quarter for which you sue?

L. No,

Court. If you had, we should have deducted it.

Second Example, or the Case reversed.

We endeavour to force our base bargains, and our base money to pass, although they are *not* marked with the stamp of justice. How few arrive at that exalted pitch in the scale of excellence, as to see their antagonist's side of the question as well as their own? and yet, among my small number of friends, I could enumerate twice as many of this description, as were found in the whole Spanish army that went against Mexico, in the crowded city of Sodom, or in the American congress. Finished characters like this, will probably pass through the world without dispute.—They have no antagonist.

Nothing is more difficult in the narrow road of life, than for a man to prevail with himself to give up a false argument; he considers it a disgrace; but if he can accomplish it, nothing is more to his honour. G. L. and B. may be said to argue to the end of time, and, pardon an Irishism, still argue. They are winners from the first onset, for none but those who are obliged, will enter the lists against them. When their faces are seen in Court, the result is known. They sometimes endeavour

endeavour to bully, but usually to tease the Bench into compliance. Like Fabius, and Washington, they win by delay. But let the Commissioner shut his eyes against fallacious and wire-drawn arguments, turn within, and examine his own ideas of right and wrong.

It may seem a paradox, but the only way to fulfil some contracts is to break them.

By a written agreement it appeared that G. had let a house to a tenant for two shillings and two-pence a week; that each party was to give or take a quarter's warning; but the tenant quitting without notice, G. sued him for thirteen weeks rent.

The Court enquired whether G. had made any advantage of the house during the quarter in dispute? when it appeared he had received two-thirds of the rent from a subsequent tenant, but insisted, with great warmth, that he had a right to his bargain, that no power ought to break it, that this extra profit arose from his own management, for which he ought to be paid, and that a denial of his demand would be great injustice, for there would be an end of contracts.

Court.

Court. You have learnt much, but there is one lesson yet to learn, to give up the ground that is not tenable. There may be honour in retreat, as well as in victory. You have a right to your bargain, and your rent; the Bench will deprive you of neither, but you have no right to more. The very act of the tenant, in delivering the key, is an argument that something was expected to be made of the house. Double rent was not mentioned, is no part of the contract, nor can it be justified. It is not material whether you or he let the house. He was your tenant to the end of the quarter; he alone was subject to profit and loss. The person you placed in the house must be considered as *his* under-tenant, and the money you received from him must be your tenant's property, which we shall deduct from the present claim, and leave you to chew a bitter cud, you wish not to taste; that this Court does not consult the interest of *one* of its suitors, but both,

XL.

The Disbanded Soldier.

When a weak question arises, it excludes discussion, and introduces the smile of contempt; argument falls to the ground, and the contest is supported

supported by *it is*, and *it is not*. These three simple words, which convey but one idea, can carry the golden prize even from Wisdom herself. Contradiction begins a dispute, and contradiction ends it where it began. One would think some points are too plain for controversy, and yet, none are exempt. We are inclined to believe as our interest directs, instead of our reason.

A disbanded foldier was sued for fifteen shillings.—I did owe that sum, replied the veteran, but I have been in the army, have served the king three years and a half, and I am well informed, that a servitude in the military line cancels all a man's debts.

Court. If the king's service could annihilate debts, but few would owe money. A man might quickly throw the dead weight of five thousand pounds off his back. The king would marshall the largest army in Europe; for to its present members would be added cripples, grey beards, and females in breeches. Government need not use violent measures to recruit the army. The odious practice of pressing would be discarded. People would then *press* themselves into the service. Property would be drawn out of the hands of the industrious, and placed in those of the military,

litary. A man might get a fortune by enlisting, and a discharge by only paying ten guineas. We should no more say, such a man is *white*, but *red* washed. There would be no need of arrests, or of bankrupt laws, and the unemployed attorney might set his white hand to the plough.

Soldier. I am sure I am right.

Court. We will not dispute it with you; but suppose we make an order for this debt only, while you examine "whether these things are so."

S. Then you will do me great injustice.

C. Then you will do your creditor less, by paying him,

XLI.

Bad is the best.

If we do wrong by our own choice, and with our own money, we expect a Court to do wrong in reimbursing our expences. We are unwilling to act as we ought, or allow another.

Sawyer sued Taylor for the board of his apprenticeship; the demand was twelve shillings.

Court. Did he board at your house with Taylor's consent ?

Sawyer. No ; but he wanted necessaries, and I took him in, or he must have been lost.

C. It appears in the course of this enquiry, that the master is bad, and the lad worse ; that he ran away from his master's house, and you sheltered him in your's. The law cannot justify you in taking away another man's servant. If he treats the lad with cruelty, the remedy lies with a justice, not with us. If you have a right to take another's apprentice, because he is used ill, you have a right to take him if he is not ; for in both cases you will claim the right of judging : it follows, a master would never be secure in his servants. Perhaps the evil requires a cure, but that cure is not with you. To secret even bad boys from their service, makes those boys worse, tends to the ruin of trade, and the injury of the master. We cannot reimburse your expence, but must dismiss the cause.

The wife of Sawyer flew like a famished tygres upon Taylor, who, though a young fellow of six feet, could hardly find safety in flight.

XLII.

Queer Aspects.

Can you, my dear reader, form an idea, how a man looks, who is possessed of the harshest features that ever compose a face, and who expects to win a cause and twenty-four shillings, both which are his right, but wins neither? or, how two hundred people, assembled in a public Court, look upon a man, who had rather have some of the blackest crimes held up to view, with death annexed, than pay a just debt of twenty-four shillings, although he is well able? Or, how even a Commissioner looks, who attempts to lead others, when he is lost himself; instead of *being a guide*, wants one? If you can, you will form so just an idea of the following case, as may save you the trouble of reading it.

Shad sued P. Sept. 1, 1785, for one pound four shillings. P. acknowledged the debt might have been contracted, but pleaded the statute of limitations, which annihilates a debt after a lapse of six years, provided that debt is not kept alive by a continued account between the parties, or by an acknowledgment, or a promise from the debtor. Shad declared he had had a running account, had
recently

recently sold him goods, and received payment. The Court continued the cause, and desired him to produce his books the next court-day.

It appeared the debt sued for was contracted in 1778, after which P. went into the army, and was absent five years. At his return, he frequently bought shoes of Shad, had not much credit, and had since paid.

The question to be considered by the Commissioners was, Whether the new connexion preserved the old debt? It was argued in favour of the delinquent, that the old demand stood by itself, stands the same still, and is cured by time; that whatever P. bought, he paid for. That as P. out of gratitude, had become a customer again, it would be ungenerous to trap him for conferring those favours upon Shad, which he might have conferred upon another.

It was urged in reply, that P. laid himself open to a suit, by appearing in the verge of the Court within six years. That his becoming a customer might excite Shad's patience, who might otherwise have made a more early attack; that the Commissioners did not conceive they had any right to destroy a debt; that a new debt will
piece

piece to an old one, as well at the end of five years as five days ; and, as the two debts did not seem divided, either by time, law, or reason, they must consider them as one.

The Bench having got over this stumbling-block, fell upon a greater. It was pleaded *in favour of P.* that in the five years above mentioned, he had been condemned in a court of justice for house-breaking ; that his father, by his prudent behaviour, as serjeant in the militia, had obtained the good graces of Lord B. his colonel, by whose interest he had procured a pardon for the son, who had since settled, become a master, lived in credit, and stood a fair chance of acquiring a fortune. That the moment sentence of death is passed upon a man, he is dead in law ; the judge can order instant execution. He can make no will, he can bequeath no effects, he can inherit no property, nor transact any business with the living. No action can lie against him ; all his own debts are cut off, no creditor can claim upon him, consequently this demand ceases ; and this is the practice of all our Courts.

But it was remarked, if the law killed, the crown could make alive ; that a pardon reinstated a man where the law found him. If the crown
gives.

gives life, it gives all its appendages; every thing belonging to the man revives with him, consequently his debts. If he can claim, as P. had done, why not pay? The crown is defective, if it cannot do what the law has undone. And to suppose life restored without action, is to suppose an impossibility.

These reasons operated with the Bench, but still there was an obstacle they could not surmount, the practice of all the courts; which they were assured, by professional men, existed. The Commissioners were set fast. They found themselves completely hemmed in between law and equity, and like Stern's starling, "they could not get out." If they attempted one side, they would fly in the face of law; if the other, they would break the mounds of equity; all the quirks of Westminster-Hall could not relieve them.—That the debt was due to Shad, did not admit a doubt, but how to give it him, did.

As the whole legislative power is in the hands of the King, lords, and commons, and as every act of theirs is supposed the act of every man in the kingdom, it becomes requisite to pay a deference to the laws, though they may not exactly hit our sentiments. He pays his country an ill

P

com-

compliment who sets up his private judgment against theirs : besides, the precedent is dangerous ; for if a man can trample upon one law, why not another ? which would immediately put a period to government. If a man will not submit to the laws, because those laws are defective, there is an end of submission, for no perfect system can exist, the weakness of our nature will not allow it. Again, if the Commissioners acted against law, they acted against an authority equal to that under which they sat ; for the same powers which favoured the culprit, constituted them a Bench. Two evils offered, one of which they were obliged to commit ; they therefore chose what they conceived to be the least, that of dismissing the cause. If they had acted against law, they could not have made reparation ; but by giving it a simple dismissal, they left Shad at liberty to pursue his antagonist in another court, or even in this, if any farther light could be thrown on the subject.

The suitors were both hurt ; one, because he could not recover his property ; and the other, because the noisome smuff, which had been extinguished by a pardon, was publicly lighted up in Court.

XLIII.

The Privilege of a Cockade.

Justice, like physic, will not take effect on every subject, nor the attempt to cure, answer the expence.—A plaintiff demanded a guinea. The Court asked the defendant if it was right.

Defendant. I am a foldier, an't please your honour.

Court. We claim no honour, nor you neither, if you refuse paying your debts. If you owe the money, you can make no objection to pay it.

D. I owe the money, your honour, but I serve the king.

C. But you do not serve his subjects, while you defraud them of their property. We often complain, and with reason, against people who serve the king.—We can enter an order in your favour [*to the plaintiff*] as in other cases; we could issue an execution against his goods, with effect, but he has none. We can instantly seize his body, but we cannot hold it; his officer will demand him out of our hands. He is a bird of passage, and to shoot flying will scarcely pay for powder and shot. You are pursuing an *ignus fatuus*, which

will lead you into a slough, the more you struggle, the deeper you sink. All you can gain by this suit is, to perpetuate the debt. It will survive the wreck of six years; it cannot slip through the fingers of time, but if he ever procures a discharge, and is found within the precincts of the Court, you may commit every thing to prison, but his honour.

XLIV.

The Power of Beauty.

Perfection is not with us. The best institution has its errors. The brightest gem may have a flaw. Judgment is random, and a trial a chance. Equity appears in such a variety of character, she is not known. There are many ways of losing a cause which she never travels. Thomas Parker, ancestor to the present Lord Macclesfield, who, by his shining talents at the bar, raised his family to peerage, was asked, in the reign of Queen Anne, why he gained a cause for the plaintiff at one assize, and for the defendant the next? replied, "I was better fee'd, and better informed." Here equity was out of the question; the silver tongue, and the golden fleece, commanded the prize.

An

An unaccountable prejudice will take possession of the heart of a judge, almost unobserved by himself, and preponderate the scale in favour of one side. My dear reader, you never saw two people fight, but you threw your good wishes into the ring, upon one of the combatants; although equally a stranger to both, and the merits of their quarrel. The weaker the man, the stronger his prepossession.

The deficiency of human judgment is another fountain of error; but here the judge stands excused; no man can act beyond his power.

Misinformation is another source of evil; both parties equally treat him with deceit. The only people who *can* throw light upon the subject, will not. As they keep him in the dark, if he blindly distributes the gifts of fortune, the fault is more theirs than his own.

It is difficult not to be won by the first speaker, if he carries the air of mildness, and is master of his tale; or not to be biassed in favour of infirmity, or of infancy. Those who cannot assist themselves, we are much inclined to assist.

314 COURT OF REQUESTS.

Nothing dissolves like tears. Though they arise from weakness, they are powerful advocates, which instantly disarm, particularly those which the afflicted wish to hide. They come from the heart, and will reach it, if the judge has a heart to reach: Distress and pity are inseparable. The man who can repel fire and sword, is reduced by a few drops of water.

Perhaps there never was a judge, from seven-
teen to seventy, who could look with indifference upon beauty in distress; if he could, he was unfit to be a judge. Though these masterly drawings of nature chiefly strike those in younger life, yet none are exempt. He should be a stranger to decision, who is a stranger to compassion. All these matters influence the man, and warp his judgment.

Kirtland having occasion to pay one pound twelve shillings to a person at Willenhall, for goods bought, applied to the carrier's inn, and saw, in the same figure, a beauty, and a landlady. "She could receive any thing." Perhaps the reader may object to a union of the words *beauty* and *landlady*, and think the first ought to be expunged by an erratum, and *bulky*, the usual companion of landlady, inserted in its room; but
however

however seldom the two first assimilate, he must for this once allow them to pass. He delivered the money to her, wrapt in a paper, and directed, told her the sum, and for whom. She deposited it in a corner cupboard, where she observed, "it would be safe till the carrier came."

After some months had elapsed, the person at Willenhall wrote for his money, which brought on an enquiry. Kirtland was obliged to send a second one pound twelve shillings, and recover the first how he could. After many fruitless applications, he brought her to the Court. A man of moderate intellects is scarcely a match, in a disputable point, for a woman that is young, handsome, and can speak well; the disproportion is still greater, if she can enlist under her banner, those who have talents and power.—The Bench was uncommonly crowded, chiefly with Commissioners, not used to attend business, who, retreating when the trial was over, gave reason to think, this was the principal cause.

It was pleaded in her favour, that she was in a distressed situation, that she ought not to be responsible, because she could receive no profit from the money; that in the act of receiving and delivering goods, she could be considered in no other

light than the carrier's servant; and that application ought to be made to the master for re-payment.

It was observed in reply, that the carrier had declined business, and was a resident in Willenhall, consequently, out of the reach of the Court; that application had been made to him, who answered, "He knew nothing of the matter;" which gave reason to suspect the money had been applied to another use. If she had said, you may leave the property, if you please, but I will not take charge of it, she had been clear, but her accepting the money was accepting a responsibility. She did not receive it as a servant, Kirtland can look to none but her. She must either return the money, or prove its delivery to the carrier. If this doctrine is not allowed, a man's property cannot be safe. Kirtland has no claim upon the carrier, except she fixes one for him, and if she pays the money, she can fix one for herself. However the Commissioners might vary in opinion, yet, on which side right lay, must be decided by the grandest tribunal upon earth, that of the public. The Bench, by a majority, gave it in favour of the landlady, and Kirtland for ever lost his money.

LXV.

The Hundred Pound Note.

Some faults merit the rod, others are too great for punishment. If the rude lad breaks his tea-cup, a flogging may settle accounts between him and mamma; but if he overturns the whole tea-equipage, astonishment seizes the family, and, through the greatness of the crime, the delinquent escapes.

The arts of stamping and refining metals have of late years been carried to great perfection, and have well paid the artist. M. thought if he could acquire these enriching powers, he should at least be possessed of a second-hand philosopher's stone, which, if it could not convert every thing to gold, would extract silver out of even dirt and iron.

He engaged Baylis, a simple fellow, who was a hired servant to a refiner. The refiner, provoked at being tricked out of his trade and his servant, brought a warrant for Baylis, and sent him to prison, and an action against M. which produced a
trial

trial at Warwick assizes. The refiner won the cause, but a man wins nothing, if his antagonist has nothing to lose. During the dull process of law, M. had acquired all he wanted from Baylis, and like his master, discarded him. He afterwards brought him to the Court of Requests. M. not chusing to appear himself, sent his wife,

Court. What is your claim?

Wife. One pound sixteen.

C. Do you allow the debt?

Baylis. No, I owe nothing.

C. How do you establish your demand?

W. It is part of a larger debt, for which I hold his note.

C. Where is the note?

W. In my pocket.

C. Produce it.

It appeared to be a promissary note, plentifully worded by an attorney, upon a six-penny stamp, for one hundred pounds, payable at three shillings a week, twelve were elapsed. This was obtained from Baylis's simplicity to bind him to
M.

M. without any value given, except what was spent in prison, and except a promise that M. would find him employment for seven years, at twenty-four shillings per week; but it appeared he was unable to perform that promise, had it been but for seven weeks.

C. Were you in liquor when you gave this note?

B. No.

C. Were you in your senses?—You may safely answer No, to that question.—How can you, *to the wife*, justify persuading a 100l. note out of an ignorant man, for which you gave no value? You might as well, while you were drawing it, have inserted a 1000, one would have been paid as soon as the other, for they would both lie till the day of general retribution.

W. What must I do with the note?

C. Light your pipe with it. Had the debt been just, you displayed a weakness in taking an 100l. note from an imprudent journeyman, not worth a shilling, and encumbered with four small children. If the demand was fair, and he an oeconomist, twenty generations of Commissioners would fall a prey

prey to time, and Baylis himself must live to the age of Methuselem, before he could discharge it. There would be no more chance of its being paid, than the web of a spider, or the good nature of an old maid, lasting to eternity. But we are inclined to think the names in the note should have been reversed, for as he has been a loser by you, and you a gainer by him, you ought rather to have given *him* a 100l. note, which by the way would have been as valid as this. Had the note been for *shillings* instead of pounds, it might have passed the Bench unnoticed, for we generally pay attention to a man's writing; it is a stronger evidence than his word; but as we conceive so pompous a thing as a 100l. pound note, though a plaything with him, is above our reach, we shall dismiss the cause, set the delinquent free, and leave this short lesson with you: That a man's hired servant is as much his property as the tools in his shop, and, that a note, obtained like this, will neither add to your credit nor fortune.

The Second Part of the Hundred Pound Debt.

A few weeks after, M. brought again to the Court, his antagonist, his note, and his attorney. The same arguments paced it again, over the same ground. No new incidents arising, the Court saw no reason to alter their sentiments, and were giving the cause a second dismissal, not from the size of the note, for had it been just, he had a right to choose what mode of recovery he pleased, when the attorney desired a continuance till the next court-day, which was granted. In the interim, the action, which promised no success, was withdrawn, and Baylis arrested for twelve pounds.

The random Baylis was terrified at the sight of a prison where he had recently suffered, and knew he could not find bail to keep himself out; M. foresaw a certain expence in pursuing a pauper, and that his flimsy six-penny stamp would not bear the keen eye of a court of justice; these considerations produced an agreement, which was, that the 100l. note should be cancelled, and another given of forty, payable by two shillings a week.

Thus

Thus the simple Baylis rivetted those chains upon himself, which his enemy could not hang on.

When a small part of this 40*l.* note became due, M. again tried his fortune in the Court, urged every argument that could be suggested by his attorney and himself, to induce the Bench to give judgment in his favour, but the note was rejected with these remarks. That the first note was unfairly obtained, no value being given ; that if M. was the cause of the others being sent to prison, he ought to support him there ; a soldier is not sent to war at his own expence ; that he had been a gainer by Baylis, in acquiring a trade, but the other had been no gainer by him ; that one of the terms of agreement for the first note was, that M. should give him twenty-four shillings per week for seven years ; this was not performed, consequently, he broke his part of the bargain, therefore could not expect Baylis to perform his ; and that the second note being founded on the first, was of the same nature ; if one was bad, the other must be so too ; if the foundation is rotten, the superstructure cannot be found.

XLVI.

The Merchant and the Button-maker.

Two long-winded combatants, like Broughton and Slack, may perpetuate a contest till they tire the spectators, and raise disputes among the judges, without tiring themselves. There are questions that will bear an eternal wrangle, and there are stubborn tempers that will eternally wrangle upon them. Though the Bench frequently determine a hundred causes in two hours, yet they were now staggered with only one, but it was beyond the human powers to ascertain, and had, by fresh summonses, continuations, dismissions, and decisions, came before them about seven times, and must have taken up more than a whole day in discussion, and after all, had left the Commissioners, and both the parties dissatisfied.

A button-maker sued a merchant for 11. 19s. 11d. but remarked, the debt was above four pounds. The merchant alleged, he was thirteen and seven-pence in *his* debt. Each of them produced a bundle of papers to justify his claim; supported his demand with positive assertions, backed with some ill-nature. The Bench could

could not enter deeply into intricate accounts, and private memorandums understood by none but the makers. Each talked mighty loud, was mighty right, and awaked those errors in each other's life, which had slumbered for twenty years. Both dealt in contradiction and scandal, but neither could bear them. Like *Ætna* and *Vesuvius*, they bellowed against each other in thunder, smoke, and fire. The Commissioners themselves could not escape being singed by the heat, for they were severally charged with giving a private audience to the enemy.

A man may dive deep, and long, before he finds a bottom where there is none. The Commissioners, however, could clearly discover there was money due to the button-maker; but as a counter-balance, the merchant produced something like an ass load of buttons that were defective, and returned as unfit for sale; these he would have sent back to the maker, but he could not be found, for being under a cloud, he had taken shelter in retreat.

The button-maker replied, that no tradesman ought to take goods after being detained six months.—The Commissioners as in duty bound, repeatedly fingered the buttons, which were as tractable

tractable as if under the command of Breslau; for they tumbled to pieces at a touch, but they could not, like him, make them whole. The Bench were divided in opinion, as men frequently are in disputable points, though they were well acquainted with the character of both parties.

First Commissioner. There seems to be something due to the button-maker:

Second Com. If a manufacturer sends in bad goods, the merchant has an option to keep, or return them; if he does the latter, it ought to be directly; no man can justify keeping them six months; it is contrary to every rule of commerce; it deprives the maker of the opportunity of disposing of them elsewhere. If the buyer has a right to keep them six months, why not six years? which would give a fatal blow to trade. By keeping them, he makes them his own, therefore, my voice shall unalterably go for the button-maker to have his money:

Third Com. We have attended to this intricate case by the hour, and if we attend to it by the year, we must at last give an uncertain decision, for we cannot penetrate to the bottom. There is a loss, and as we know not the amount, nor who

Q caused

caused it, we know not how to fix it. This loss must be borne by one, or both of the parties; but both withdraw the shoulder from the burden.— There are two material questions for our consideration before we decide; whether the buttons are marketable? and if they are not, what time the merchant may fairly keep them?

That they are not marketable, is evident even to us, who cannot see with the curious eye of a button-maker. All allow it but the maker himself; it follows, that he is the first aggressor, the whole of this misunderstanding originates from him; the merchant is passive, and shall we, who ought to be guided by equity, punish one man for the faults of another? A pattern-card is delivered to the merchant of the button and the price, and though not a word is spoken, it contains a tacit agreement, that the goods shall be equal, or very near the pattern; if they are not, it is a deception arising from the maker, who alone ought to suffer. If he is a man of honour, he will take care to prevent it, but if they slip his attention, that honour will oblige him to take them again. To decide in favour of the button-maker, would encourage the manufacture of a bad article, cast a stigma on the place where they rise, and tend to remove that manufacture to another,

other, where it shall be better performed. It would operate against that country, for which we ought to entertain the most sincere regard. Bad work tends, as it ought, to ruin the maker ; but it tends, as it ought not, to ruin the merchant, by depriving him of the sale of his goods, of his profits, his character, and brings him into the high road to destruction. Common justice directs that we should exert every method to prevent the circulation of a ruinous article. The buttons before us, will not answer the end for which they were made ; they are not worth joining to a coat, he who sells them, sells his customer. As the merchant had no hand in their production, he ought to have none in their loss, consequently, he stands clear of the first question.

What time a purchaser may fairly detain defective goods, cannot exactly be ascertained ; it will vary with circumstances, and here we must call in the aid of our reason. We are not to suppose the man who buys a hat, can return it after having kept it half a year, he might have discovered its errors sooner. If the shoes pinch, he may feel them on Sunday morning, and may return them on Monday. If he finds a hole in his stocking, he must convey them back in a short space, or the hosiery may fairly suspect he has worn it.

If the auctioneer advertises that the goods shall be cleared away with all their faults, no complaint of the buyer, though made within an hour after purchase, can avail; it was an agreement between them. But if the auctioneer marks a piece of cloth twenty-five yards, which measures but twenty, the buyer has his remedy, because the auctioneer has broke his agreement; but this remedy must be applied in a day or two, otherwise the loss may fall on a wrong person; besides, even in that time, the buyer has an opportunity of discovering the mistake; nay, the very article before us may be kept various lengths of time with propriety. If I order a set of buttons for a suit, and do not discover their faults, and return them in a few days, I have no right to return them at all, because the neglect is mine, I have had full time, and I have no right to sport with the property of another. But though the article is the same, the reasons widely differ. These buttons were delivered to the merchant packed in papers, with one on the outside, to shew the pattern. It is expected by all parties, that those within are equal to that without; but this cannot be discovered by the merchant; it is not possible for him to open every parcel that comes to his warehouse, he had better give up his profit and his profession, consequently, there is a necessary, an unavoidable confidence

fidence reposed in the maker, a confidence that should be preserved inviolate, and shall we assist in destroying it? These goods, with a variety of others, are deposited in casks, and shipped to foreign parts, perhaps they went to Ireland, for we know the merchant before us deals there. How then is it possible their quality should be known till they are opened for retail use? and how can fix months be an unreasonable time? The merchant and the purchaser's right of returning, is preserved by the faith of the maker; his responsibility goes along with them till they arrive at the consumer. If this was not the case, a manufacturer might wrap up a log of timber, instead of a gross of buttons, and stand clear of mischief; nay, what difference is there between a brick-end, and a button unfit for use? the nature of the crime is the same, it only differs in degree. We cannot proceed upon firmer ground than the general practice between the maker and the merchant, that all goods of defective quality may be returned, provided they are not *wantonly* or *negligently* kept, I know a lot of goods are now returning from America for the maker. The length of time must, in some measure, depend upon the place to which they are sent; nay, I will go farther, it is doubtful whether any given

time can annihilate restitution for fraud. While the merchant has no chance of justifying himself, the maker must be his security. But whether the merchant is indebted to the button-maker, or the button-maker to him, is uncertain.

First Com. Give the button-maker something.

Second Com. I will not recede from my first resolution.

Third Com. If the decision was vested in me, I would give him a shilling, not so much because it is his due, as to put an end to the contest.

Button-maker. The whole is my due, and I will not take a farthing less. If you deprive me of this, I will seek a remedy in another Court.

Merchants. I shall think you use me very ill, if you oblige me to pay money to a man who owes me thirteen shillings and seven-pence.

Third Com. The Bench is divided against itself, and their judgment cannot stand. The sense of those off the Bench, is equally divided. We can neither decide to satisfy them nor ourselves; the fore is too much inflamed to admit an healing remedy. I will if you chuse, simply dismis the cause, and
leave

leave the combatants to rake each each others vitals in a court of law, plentiful bleeding will reduce the most fiery temper.

Second Com. I will not consent to a dismissal.

Third Com. But if we cannot agree upon a judgment, the cause dismisses itself. I will, if you please, enter a dismissal after full hearing, which amounts to a determination, and excludes a cause from this Court, and every other, except the Lords.

Second Com. I will not consent to that; the button-maker ought to have his money.

Third Com. We row the cause from side to side, but the stubborn bank will not give way.

After much altercation, and two hours spent in this crabbed cause, it was determined to award the button-maker a guinea, to the dissatisfaction of every member.

XLVII.

The Living outwitted by the Dead.

There is an evil under the sun which totally escaped the penetration of Solomon, and is nowhere found in his catalogue; that a man should live in affluence, assume airs of pride, carry on a flourishing trade, gain credit upon the strength of appearances, pay his way rather shabbily, and at his death, his wife, by virtue of a marriage bond, seize the whole property, live with her children as luxuriously as before, and his creditors be cheated out of every shilling. Though they have nothing of their own, "they fare sumptuously every day." The industrious starve, while the family shine away with the fruits of their labour. Not one of Solomon's evils call louder for redress. If they have spent their property during the husband's life, what reason is there that the creditors should make it good at his death? *He* has wasted it, not them; and if the creditors have not wasted it, why should they suffer by those who have?—Trade is the very life of a country. There is no trading without credit; consequently every assistance should be given to the creditor. If the property

erty is absolutely gone, he must go without it; but if it exists, he is the rightful owner; it should never be covered with a petticoat.

The law allows a widow her thirds, but it is the thirds of what remains after the debts are paid, and if nothing remains, nothing she can have.—Why then should a writing, smuggled between two rascally people, of which the creditor had no knowledge, cut him off from his right? Law ought never to countenance fraud. A man has a right to live in stile with his own, but not with another's. The idea that the family is provided for in case of death, prevents attention, and promotes a life of luxury, at the expence of the industrious. Foul practices, like this, sap the foundations of credit, and of commerce. It may be replied by the widow, who thinks of no interest but her own, and by her relations, who fear the weight of her family upon themselves, "If the stone-hearted creditor takes away their effects, he cruelly adds one affliction to another, breaks up an innocent family, involves them in sudden calamity, and brings them, who have figured in better days, to the workhouse."—But perhaps there is a mistake in this declaration, Does *he* bring them, or do they, by their misconduct, bring themselves? If he took *their* property

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property he would wrong them, but there can be no wrong in taking his own, there is no more reason that his substance should be fraudulently applied to preserve them from labour, or the parish, than any other family found in the street. Society should rather teach its members to subsist by their own industry than by that of others. A marriage bond encourages idleness and dissipation; it may operate safely against heirs, but should never against creditors.

W——, with his family lived gaily, took his pleasure, occupied a grand house, was seldom found in it, and at his death was debtor to L. seven pounds. L. afterwards applied for the balance, but was given to understand, that W. died insolvent, and that the widow claimed the whole effects by a marriage covenant. Not satisfied with this losing answer, he sued her for 11. 19s. 11d.

The lady observed, that money due from her late husband, did not concern her, nor could she pay it, for the remaining property was hers by a marriage settlement.

Court. As you possess the property of your late husband, and receive his debts, without paying,

we shall be glad, for the satisfaction of L. to see the authority by which you hold it.

A bond was produced, by which it appeared, the effects, to a certain amount, were made over to a third person, in trust for her use. It was farther observed, the assets left by the deceased would scarcely defray the bond.

C. By practices like this we one cheat another. A few insignificant cyphers marshalled together in battalia, and commanded by a figure at their head, seize, like freebooters, and carry off the whole effects. What a man has been many years labouring for, he is deprived of in a moment, by a single dash with the pen of the deceased. The pen and the pistol can instantly take his money, without his consent, by two different ways, which exactly resemble each other for honesty, but there is this difference, in one, the delinquent is secured by the law, in the other, by a halter. The Court has a right to oblige a widow to refund the property of the deceased, for the use of his creditors, a requisite measure. There is exactly the same reason why you should refund this, and we conceive, from the Act, and our oath, we have the power of compulsion; but as the courts above have not overturned this villainous security, we shall

shall dismiss the cause, with a most earnest wish, that Lord Mansfield may live to frown upon the marriage bond, in the Court of King's Bench,

XLVIII.

The Landlord and Overseer.

The parties interested in a cause, are the most forward to decide upon it, but are, of all others, the least able. He is the best judge who takes neither side, but keeps equity in view, as the mark to which he steers,

Edward Moore, an inhabitant of Deritend, sued the overseer of Aston, for the rent of a house occupied by a pauper. The overseer heavily complained against the demand, "If he was obliged to pay the money, he must pay it out of his own pocket; for the parish, at a public meeting, had ordered that no rent should be paid for paupers."

Court. Did the overseers ever engage to pay rent?

Overseer. Yes.

C. Did

C. Did they give notice, to the landlord that they would desist ?

O. No.

C. While the pauper was tenant, the parish was no way responsible ; but when they agreed to pay rent, the overseer for the time being, immediately became tenant, therefore subject to all the laws of tenancy. You may quit, like other tenants, but it must be after reasonable warning, otherwise the landlord becomes a sufferer.

XLIX.

The Fee.

“ Where no work is done, no money can be demanded,” is a proverb which has stood the test of ages ; and, though we cannot always adopt it, is founded in reason. If he who labours ought to be rewarded, it follows, he who neglects, ought not.

It is a received opinion, that no class of people are better paid for their work, than the gentlemen of the faculty, and the law. This would be true, if they could recover their money. Six months credit is a rule of trade, but the rule of law and
physic

physic is apt to run six years. It is easy for a man to place a fortune in his books, the difficulty lies in getting it out. I am well acquainted with an attorney, who, in the course of twenty years, deposited four thousand pounds in his journal, which arose from beggarly contests, not one of which, perhaps, will ever be paid: thus he may be said to "starve upon quarrels." How much more would it redound to a man's honour, could it be said, he had spent four thousand pounds in promoting peace among men! The amiable behaviour of Edward the black prince, to his prisoner, John king of France; the stranger, who generously returned the fortune to the son, of which the father had deprived him, and wantonly made the stranger heir of all; the merchant of Birmingham, who rebuilt a parish church without telling the world; the four noblemen, who offered their own heads to save that of their master and friend, Charles the First; and the poor presbyterian parson, who, from choice, sold up all he had to pay his father's debts, while he starved upon 30l. a year, fall short of this shining character. If one man had been found of such a description, he would have saved Sodom.

A surgeon, who assisted others to live, while he could hardly live himself, brought a long string
of

of causes to the Court; among others, he charged Wootton half-a-guinea for delivering his wife. Wootton exulted that the wife was delivered before his arrival, consequently, the work was finished to his hands, and as nothing was done, nothing could be required.

Court. Whatever a man *sells*, we have no right to expect him to *give*; one might beg a draught of ale with a better grace, at any house, than an alehouse. The gentlemen of the faculty have three things to dispose of, their judgment, their time, and their medicines; whenever they part with any of these, they have a right to payment. We sometimes solicit a reduction of their demand, not because we think it enormous, but out of compassion to the needy, and, to their honour, we never solicited in vain; but we always allow the debt. If there was not, at least, a chance of being paid, the poor might want assistance in the time of distress; a greater evil than a suit in this Court. We pay the doctor, whether he cures the complaint, or confirms it; we pay him for sending us *out* of the world, as well as for bringing us in.——As the surgeon's time was spent in the service of Wootton, he must be rewarded for that time.

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L.

The Reckoning:

The weakness and the folly of man is productive of evil ; that evil finds a remedy. If the child is disobedient, the vile corrosive called a rod, is to reduce him to order. One person attempts to correct the errors of another, who was never able to correct his own. If the imprudent journeyman squanders his whole week's wages in one day, he will find his punishment, and his remedy, in starving the other six. The meek husband is goaded into action by the pointed spirit of his wife. There is a remedy, though not always a cure for every defect, from the gentle rebuke, to the halter. The remedy for large debts is the intricate windings of the law ; and for small, the Court of Requests, which might easily cure both.

There are particular classes of suitors, besides the quarrelsome, whose faces are repeatedly seen in this Court, as the huckster, the club members, the milk-maid, the publican, &c. These being often wounded, apply often for a cure:

The

The manufactures of Birmingham are conducted by an amazing number of the lower ranks, a people, who are always upon the verge of want, without fearing it. The majority of these useful persons keep one main point in view, and to this every consideration gives way, *how they shall procure a supply of ale*. This seems the height of their wishes. They are not votaries of Bacchus, who presides over the wine cask, but they worship his deputy, who presides over the ale-barrel.

Thus circumstanced, it is no wonder an *outward* intimacy arises between the publican and the journeyman. The first endeavours to draw the other to his house, who is easily drawn, and he in return endeavours to bilk him. The publican can scarcely receive much of the other's property without losing his own. There is not a petty ale-house in the whole town, but chalks up plenty of scores against the journeyman; there is not one journeyman who strives to diminish, but to augment them. He is never frightened, like Balthazar, at the hand writing on the wall. If he pays off two, it is with a view to put on three. While he uses the house, the scores rest in peace; when he quits it, he is brought to the Court of Requests. An account may be carried on between them for years, but the Court must at last

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strike

strike the balance. The little publican lives by his enemies, for he subsists upon those, who are ever ready to bite him.

Marshall was brought before the Court for fifteen shillings; he acknowledged three shillings and nine-pence, which he was willing to pay. It appeared that four people, of which he was one, had spent an evening, and the above sum, at a public-house, had not paid their reckoning, and the landlord sued Marshall for the whole.

Marshall urged, "as he had not drank the whole, he had no right to pay for the whole; he was but a fourth of the number, had drank but a fourth of the drink, and ought to pay but a fourth of the money. No man had a right to pay for more than he received. The landlord ought to look to each man for his share, and not the whole from one; and that there could be no justice in obliging one man to pay for another."

Court to Marshall. When a company drink at a public-house, they can be considered by the landlord but as one person; they have joined themselves together, and he has no right to put them asunder. He cannot say to one, as he enters,

ters, "You may drink," and to another, "you shall not," nor ask any one whether he has money to pay his reckoning. One may treat another, for what he knows, or he may treat the whole. It is a partnership for that night, and what right has the landlord to enquire who finds the capital? They are equally accountable to him for the whole debt. It is not enough that one pays his part, he must take care that the whole is paid; this is *his* concern, not the landlord's. When the partnership dissolves, whether it be at *mid-day* or *mid-night*, every partner is responsible for the debts contracted in the partnership. He that sits silent in company has the same right to pay for the tankard as he who called for it; he who watches at the gate is just as culpable as he who robs the house. If one of them breaks a glass, it is nothing to the landlord who broke it, he can charge it to the company, as well as its contents, and they must settle the matter with the individual. If this was not the case, a landlord would soon have his cellar emptied, and nothing left to fill it. One man *with* money might bring a dozen without, who being strangers, the landlord is deprived of his property and his remedy, and as no evil can be brought upon a man, without its attendant cure, for they follow each other like the substance and the shadow, we must charge the debt upon

you. He can take any of the company, and that which he takes, may demand their shares from the rest. It is to your honour that he singles you out, he thinks you the Pam of the pack.

LI.

A Quarter too late.

How often have I told my dear reader, that a member of a sick club sued the stewards for his weekly pay? Yet not so often by five hundred times as I have seen such a cause pass the Bench. There is always a sameness in the name, often in the circumstances, but sometimes they widely differ. Every incident, in some cases, is so much in favour of one side, that we wonder at the stupidity of the other, for suffering it to appear in public; he brings the laugh of the crowd upon himself; every eye can see the folly but his own. In other cases, a decision depends upon a combination of circumstances; but a third, like a spider at the extremity of a slender thread, is directed by the smallest breath.

When a sick member wishes to cling to the box, and the well members to shake him off, and
shun

shun him as an infected person, it is no other than a declaration of war between the parties ; the cause requires a minute investigation, and at last turns upon a delicate point.

A member of a sick club declared himself upon the box. The club wishing to rid themselves of an expensive brother, declared " he " had forfeited his right by being disguised in " liquor; by being seen gambling, employed at " his calling, and what was worst of all, he " pretended to be lame of an arm, yet they " had seen him with that very arm, lift the " tankard to his mouth. Any one crime in this " long catalogue was sufficient to disinherit him."

The Court observed, that these heavy charges were rather *asserted* than *proved*; that they could not act against a sick member upon hearsay evidence, and asked, if they could substantiate their allegations; this not being done, they were going to decide for the sick, when it appeared, that a member lost his right by omitting his payments for six club-nights; that our member had omitted five, and finding himself sick, had, on the sixth, taken one night's pay, to keep the road to the box open. But though he spent his evening with the members, he forgot to tender the money till

XLVII.

The Living outwitted by the Dead.

There is an evil under the sun which totally escaped the penetration of Solomon, and is nowhere found in his catalogue; that a man should live in affluence, assume airs of pride, carry on a flourishing trade, gain credit upon the strength of appearances, pay his way rather shabbily, and at his death, his wife, by virtue of a marriage bond, seize the whole property, live with her children as luxuriously as before, and his creditors be cheated out of every shilling. Though they have nothing of their own, "they fare sumptuously every day." The industrious starve, while the family shine away with the fruits of their labour. Not one of Solomon's evils call louder for redress. If they have spent their property during the husband's life, what reason is there that the creditors should make it good at his death? *He* has wasted it, not them; and if the creditors have not wasted it, why should they suffer by those who have?—Trade is the very life of a country. There is no trading without credit; consequently every assistance should be given to the creditor. If the property

lips into scarlet. I have observed in a former case, that "every one has concerns he wishes to hide," if he does not, the world to which he divulges them, will brand him for a fool. B—G— asked John W——n if it was a crime to be connected with a girl? "Yes, if it becomes public." An old Grecian said, "that not only his actions, but even his thoughts, were so pure, that he wished there were windows in his breast that the world might see them in their simplicity;" but if my late friend Henry Henn, Esq. had heard this declaration of pride and ignorance, he would have said to the standers by, "take care of your pockets."

One would think a character but little regarded by the owner, who voluntarily fools it away for six shillings. He may be said to value it, as the cock in Æsop, valued the diamond, which he gave up for a grain of barley. He may lose it for that sum, but not regain it.

There is a degree of lameness in the actions of men, but their prudence consists in conducting them; one enjoys a fair character who does not deserve it, another deserves a better than he possesses.

A defendant was sued by a woman for a debt of six shillings. He thought it unjust, but would submit to the judgment of the Bench. A girl being pregnant by him, he agreed with the plaintiff, "that the girl for privacy, should lie in at her house, she should nurse her, and find all necessary diet, during the month, for twenty-four shillings, but if the girl went to work before the time expired, a proportionate sum should be deducted." At the end of three weeks the girl applying herself to labour, the defendant from thence concluded, he had no right to pay for the fourth week, though the plaintiff had supported her and the child upon his own agreement.

Court: If the girl and her child lay upon the plaintiff a month, she ought to be paid for a month; this seems to have been the meaning of both. The only point to be determined is, whether you or the girl ought to pay. A bargain was made with you, but none with her. A woman has been known to enter upon business at the end of one week, and if this had been the case, ought she to have maintained her four? You must settle with the girl for the profit of her work during the fourth week, or it may go towards the next lying-in, but you must be responsible for this,

If

If you trick the plaintiff in your first distress, you may chance to want a friend in your second. You have now sported a character of value, against a trifle, and lost both. Another would wish to hide what you have made public. Fame, with her hundred tongues, can carry our defects into the world without our assistance,

LIII.

The Tempest, as it was acted by their Majesties Servants at the Theatre in Birmingham.

In all partnerships, or connexions which are successful, it is easy for the partners to agree. Prosperity raises the smile. But when matters run retrograde, the fault is laid upon every back, but none can be found that will bear it. When G, and L. became bankrupts, "You see," says G, to a creditor, "what you suffer by the conduct of your friend L." The same creditor afterwards saw L. "You see," says L. "what you suffer by the conduct of your friend G."

The trades in Birmingham everlastingly fluctuate; the emoluments, and the fashions, have changed so often, that one would think nothing

new

new could offer. Yet these changes are infinite. Change is invention ; invention is the life of trade. But I know no trade in Birmingham that has undergone so many vicissitudes as the stage. The scenes first opened in the apartments of a horse, such as the shed, the hovel, and the stable ; and the performer, like the inhabitant, regaled on something like bran for his meat, and water for his drink. But the comedian sailing along the tide of fourscore years, sometimes moving two leagues forward, and sometimes one backward, now figures in an elegant stile. He appears in character, acts with propriety, and is the gentleman off the stage as well as on. Many causes contributed to his success, as, the increase of commerce, which has produced an increase of wealth, of pleasure, and of taste, these tend to encourage merit. The stage which scarcely furnished water-gruel for its heroes, now draws 300l. a week from Birmingham. The town is treated with characters that please, and pays willingly for the treat. But in one of these backsliding intervals which happened about 1773, the credit and the profit of the stage were at a low ebb ; instead of drawing three hundred they could not draw threescore. The receipts did not pay the expence, and every party was dissatisfied. The town upbraided the manager, because he offered them bad performers ; and the manager upbraided

braided the town, because they would not pay for good. Ill success produced quarrels among the comedians themselves, every one had blame laid upon him, and always threw it upon another. The house was sometimes so thin, that the few who attended, had their money returned, and all departed in peace, but the actors.

Though the manager had hired these his Majesties servants, at a weekly stipend, yet he concluded, as they did not perform, they had no right to receive pay; if he was no gainer by them, why should they be gainers by him? He withheld their wages. But though his Majesties servants had been used to change like the camelion, yet, as they had not, like him, been used to live upon air, they resolved, that one of them should try the fate of his cause in the Court of Requests, as upon this determination would depend the others. — Wrighten sued the manager for 11, 11s. 6d, one week's salary.

The manager alleged, it was an ancient maxim, "where nothing is done, nothing can be demanded;" that it would be unreasonable to maintain a body of people, without some profit arising from that body to maintain himself; that

the loss was too great for *one* to bear, each therefore ought to bear a part; that he subsisted by their performance, and if they did not perform, he could not subsist, how then could he pay?

It was remarked in reply, that the parties were bound by an agreement, upon the strength of which, the comedians had entered his service. He could demand their attendance, and they his money; had they denied assistance, at proper seasons, the fault had been theirs, and the demand ceased; he must find them employment, and they must find attendance; that they could not be accountable for thin houses; that the servant had nothing to do with the profit of the master. They were, like other servants, upon a certainty; profit and loss must rest with the manager, as with other masters. If the emoluments had arisen beyond expectation, would the manager have conferred those emoluments upon them? or could they have demanded them? If the profits cannot be claimed by the actor, it follows, the loss cannot be fixed upon him,

The manager, convinced by these reasons, cheerfully acquiesced in a decision against himself, and departed the Court with a complaisant smile.

LIV.

The last of fourteen.

There is nothing more difficult for a judge, next to discovering truth, than to ward off a bias in favour of one of the parties, though equally unknown. Something within, unobserved, will plead for one. This bias is frequently found to change sides, and when this is the case, it shews, it does not arise from prejudice, but follows the evidence, and is in pursuit of justice, under whose banner it wishes to enlist. If a child happens to be one of the parties, it seems to claim our favour in spite of ourselves; the bias becomes fixed, and we cannot remove it. Perhaps there are good reasons for placing it there; being the weaker side, it demands our support; the man often imposes upon the child, but the child seldom on the man. The impositions of the man, proceed from design, but those of the child, from imprudence. It is also less capable of pleading its cause; superiority will bear down the feeble. It follows, that a bias is necessary, but like a deceitful friend, it must be narrowly watched.

A girl

A girl of fifteen, was sued for 1*l.* 7*s.* for wearing apparel. It was said, in favour of the girl, that the clothes were purchased by the parents, while she resided with them, at the age of fourteen. The plaintiff believed, she abode with them at that time. An evidence declared, that the mother had since sold one of the gowns, perhaps for drink, which proved a mother's power.

Court. It is necessary, the plaintiff should be paid, he has parted with his property, and no prevarication can be allowed. Either the father, or the daughter must pay him. But we are extremely tender in fixing payment upon children. We may bind them with fetters in the beginning of their days, which they never shake off. Every chance should be given to youth. Prudence is not to be expected from fourteen. We ought to support them as far as justice will allow, and if they fall, let it be by their own act. We may proceed against the father upon presumptive evidence, because there is no danger in the event, but we cannot proceed against the daughter without positive. If a daughter resides with her parents, is under their care, as part of the family, and they receive the profits of her labour, they must be responsible for the debts

debts contracted in her support. But if the girl lives in a state of separation, works upon her own account, receives and uses her own money, she alone is answerable for payment, though under age, provided the debt was for necessaries.—How far the case before us falls under this description we cannot at present determine, circumstances appear so much in favour of the daughter, that we cannot make an order against her. We wish the action withdrawn, that the plaintiff may bring the father. We cannot even then ensure success, for we are often treated with falsehood; but if the debt should not fall upon the father, the plaintiff may still have recourse to the daughter.

LV.

The Female Contest.

The habit of our mind is so various, that, at one time, we would not divulge a secret, even to a friend in private, for seven guineas, while at another, we should publicly proclaim it to the world for seven shillings; thus, a man may forfeit his life by robbing another of a few pence,

pence, who could not be persuaded to part with that life, even for ten thousand pounds. This is the animal of reason !

Cooper sued Anson, for "seven shillings, "of good and lawful money of Great Britain, "for goods sold and delivered," by one wife to the other. Both the husbands were of still character, and though their names stood in the front of the cause, they did not appear, had nothing to do with the trial, which was wholly conducted by their wives.

Anson's wife acquiesced in the justice of the debt, but remarked, that Cooper himself had been familiar with her, that she had frequently granted him all the favours she could grant, and that a close connexion, like this, cancelled every demand.

Coop. When my husband was concerned with her, I make no doubt he answered every claim she made upon him, he never solicits favours without pay; the connexion and the debt, are different things. It rested with her to make a bargain.

Court.

Court. When you settled accounts with the husband, was this debt mentioned.

A. No!

Coop. I think it very hard she should take away both my husband, and my money. [*with a smile.*]

A. If I gave him all I could, I have a right, in return, to all I owed, or I am ill used.

Coop. It is I that am ill used, and have a right to complain.

A. She should keep her husband at home.

C. Perhaps you will not permit her.

Coop. I love my husband. He minds the main chance, his only fault is going after the girls, and as I cannot prevent it, I excuse it.

C. Why you shew more philosophy than half your own sex, and the whole of ours; you give your bread to the hungry, and fast yourself.

A. I will never pay the debt.

Coop. Then I will have an execution.

C. It would be a pity to send the husband to prison, because the wife goes astray. You add one affliction to another; besides this would give the delinquents a fairer opportunity.

Coop. I only want my money, I do not complain at their intercourse, for if he has not her, he will have another, and I had rather be at variance with one woman, than a troop.

C. If we judge from personal accomplishments, the odds are much in your favour.

Coop. Variety is not in one, a truth she is well convinced of.

C. The plaintiff shews an amiable temper in pardoning an evil she cannot cure, a temper seldom found in the sex, but is worthy of cultivation: it carries its own reward. The likeliest way to reclaim, is to forgive. The defendant too takes the best method for her own cure. No man who has a character at stake, will venture it with a woman who is the trumpeter of her own crimes, an instance rarely met with. By accusing herself, she accuses him. If a woman cannot hide her conduct, modesty forbids her to tell it, she leaves that for another. This woman may fairly be said to govern, with an absolute sway, every animal with antlers in her dominions, or she durst not have divulged so important a secret. There is no danger of a prosecution, for the husband is not allowed to proceed without orders from the guilty wife.

Every

Every tender feeling is abolished, or she would not court the hisses of the crowd.

If a man enters the precincts of his neighbour, redress is not with us. Debts only are cognizable in this Court. That the claim before us is just, is not doubted, that it has not been cancelled is allowed by both; we must therefore make an order for payment; but out of tenderness to an injured husband, we shall make those payments easy.

LVI.

The Broken Box.

It is dangerous to deposit money with the necessitous. It may be trusted with him who *has*, but to trust it with him who has not, is like trusting it to the bottom of the sea. In the commercial world, a rich knave is preferable to a poor honest man, one pays in money, the other in promises. An acquaintance of mine remarked, he would in future endeavour to trade with rascals, for he was almost ruined by trading with honest men. When a man holds the property of another, has nothing of

his own, and want becomes urgent, the temptation overpowers the honesty. There are ways to oblige a man of fortune to refund what he ought, but what way is there to oblige *him* to pay money who has none? The property once consumed, can no more be recalled than yesterday.

Jelfs had lived in affluence and reputation; but becoming old and poor, had, as the last resort, opened a public house, at which was kept a sick club. The club-box, containing their archives, and their treasure, was broke open and robbed of their whole capital, consisting of eight pounds. Their suspicions, from a variety of corroborating incidents, seemed justly to fall upon Jelfs. As the contents of the box equally belonged to every member, it was agreed that one of them should sue Jelfs in the Court of Requests, for his share, as upon the determination of one, would depend all.

Court. Whoever holds the property of another, no matter by what means he obtains it, is debtor to that other. If he owes, he ought to pay; if he will not, compulsive methods are requisite. But the case before us is not simply a debt, it carries a degree of crimination. From the
many

many collateral circumstances which have appeared against him, perhaps there is not one person in this Court, believes him innocent, himself not excepted: all but *one* seem to declare it; nay, his own wretched vindication, nearly amounts to a confession. But there is no direct proof against him. The laws of England carry a tenderness, which does honour to government. They seldom operate against an offender, without positive proof. This tenderness is founded upon an old maxim, which does honour to humanity, "that we had better let ten guilty persons escape, than condemn one innocent man." The law presumes him innocent, till he is proved guilty. We would rather augment, than diminish, a lenity allowed by the laws, and universally approved. As there is no positive proof against him, we shall dismiss the cause, leave the wrongs of the club undressed, and let those wrongs rankle in his own bosom. From the temptations of poverty, he seems to be drawing off the last remains of a good name; after preserving it to old age; we will not therefore destroy the dregs of his character.

LVII.

The Hundred Tongue Club.

All social communities are conducted by wisdom, or they are ill conducted. With her aid they stand; without it they fall. Ability, introduces method, method perseverance, and perseverance success. A single capacity may, with ease to itself, accomplish mighty things; nay, there are but few undertakings too great for one man to achieve. Guided by wisdom, Marlborough conquered, Brindley planned, and Pitt governed. Voltaire says, "the man who is able to conduct a family, is able to conduct a kingdom." The same talents which aid the master, in the choice of his servants, will the prince in that of his ministers. If one can lead his children, the other can lead his people. But though the powers in both are the same, there is not one man in ten able to conduct either. It is impossible for perfection, and human nature to exist together, and yet in my narrow circle of acquaintance, I could point out two or three of amazing judgment, who upon every question seem to think right.

If

If I mention a society, composed of many people, without a leader, every one speaking at the same time, and striving who shall speak loudest; not one knowing how to write their name, scarcely to sign a cross, or with which hand to sign it; it may fairly be supposed, I am introducing a *female club*.

We abound with clubs of the feminine gender, some composed of young girls, some of wives, or widows, and some a mixture of all. A mantua-maker, to introduce business, will establish a *gown club*. The members subscribe weekly, and ballot for their chance. A *stays club* is brought forward by the stay-maker, but both he, and the mantua-maker, are fortunate if they recover payment. A woman may be rigged from head to foot, by a female club, provided the expence shall not exceed a certain amount. I have not yet heard of an institution, which would bear the name of the *husband club*, where a girl might ballot herself into matrimony for a weekly sum. Such a society would not be limited to a small number; a member would not lose her chance for non-attendance, nor, till married, be brought to the Court of Conscience for non-payment. No club would be so closely followed. The one solitary club-night a week,

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would

would increase to seven. Of all institutions, this would be the most acceptable, notwithstanding some of the lower class among us, know already how to erect themselves into wives at sixteen.

A woman sued the stewardess of a sick club for eight shillings, two week's pay. About twelve of the members appeared to oppose her. The case being extremely plain, and the Commissioners being masters of it in a few seconds, they left this body of active females to the exercise of their favourite powers, the powers of eloquence. Every tongue had its full scope for some minutes, while a silent smile sat upon the bench. If you have seen a group of pedlars quarrelling for a stall at a fair, you have a tolerable idea of our present contest. This confusion of tongues would well bear the name of Babel revived. As words were plentiful, and ideas scarce, the same sounds were continually repeated, like the chimes in a steeple, but loud as the peal. The Commissioners could see, what is seldom seen, twelve females without disguise! and their passions take their natural turn without controul. They could observe, how the violent use of the tongue, promoted a friction in the fluids, the friction produced a warmth, the warmth kindled into a fire, the fire began to redden in the
cheek,

cheek, and sparkle in the eye, when, to prevent the rising flames, the Court remarked,

By a certificate from a gentleman of the faculty she has been ill three weeks, which is corroborated by her face, and allowed by you. She is a stranger to us, but she carries the air of prudence, and if we can judge from appearances, we should think her more inclined to subsist by her own labour, than by yours. You allege, she has forfeited her right by breaking the articles, in being found at work; but that work appears to be no more than assisting another to cook a small joint for her family dinner, which a woman is able to do even in extreme sickness. The discovery was much to her credit. You strain the words beyond what they can bear; you might as well exclude a sick woman for pinning her hat, or buckling her shoe. The plain meaning of the clause is, "if she labours for a livelihood, she shall be expelled." We shall act by her, as every one of you would wish us, in her situation, to act by you, make an order in her favour. We do not advise a restraint of the tongue, that would be advising the fierce north-east wind to blow softer, but we advise you to remember an expression dropt by the first of men, "Behave to others as you wish them to behave to you."

LVIII.

Character.

There is scarcely a word in the English language more perverted than that of *riches*. We limit the sense to money, or what money will purchase. But riches, like the various coins which usually compose them, appear in a multitude of forms, and all, like the coins, are extremely acceptable. Whatever is valuable property, not possessed by others, is riches.

Very few things are worth more to a man than his limbs, and yet he who commands two hands is not rich, because most men hold as many. But he who unfortunately has but one, may be reckoned poor, because he is below the medium. A head is of no particular value, because every man has one, but there may be some difference in the lining. As every head is not fraught with wisdom, knowledge, wit, or good sense, those who are, have a property beyond the generality of men, and may be counted rich. They who are not holders of these treasures, do not much value them, because they are unknown; they who are, esteem them above the price of purchase.

Health is riches ; he who keeps it, keeps a jewel of inestimable worth.

Another species of valuable property is *youth*. The young experience variety of pleasures from which age is cut off. Like the bee, they can draw sweetness without poison. They seem made for the world, and the world for them. Youth commands pleasure, and pleasure is a fortune which the man of threescore has spent, never to be recovered. If two men in the commercial line, possess 10,000*l.* each, one aged thirty, the other sixty, the man of thirty is twice as rich as the other, for he can easily double his fortune while he doubles his years. Time is equivalent to money.

Beauty is a gem of the first water ; those who do not own it, affect to despise it ; those who do, think it invaluable. It often covers defects, and sometimes makes up the loss of all. Miss Fanny B. would rather kill with her beauty, than part with it for money. All feel it, admire it, wish it. Those who possess it, assume more airs of pride, than those who possess money, which proves its superior value,

Whoever possesses a *character*, is master of true wealth. He need not court, he will be courted.

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We have the authority of Solomon, who was read in man, "that a good name is preferable to riches." Perhaps this property is, of all others, the most durable; for riches may make themselves wings and fly away; talents may fail, health decline, youth wear off, and beauty fade, while a fair character may continue for life. This is the only property a man has an absolute power over, all the others may be taken from him, but if he loses this, it must be by his own consent; he may discard honesty, but it will never discard him. It is a feast on which he may ever regale. He, like his great grandfather Adam, solaces in the paradise of innocence, and an angel will rather protect him within, than drive him out.

Taylor sued S. for one pound eight shillings, which being denied, the Court entered into the merits of the claim. It appeared that Taylor worked as a wheelwright many weeks for S. who at several times made payments in small and irregular sums. Taylor exhibited as fair an account as could be expected from a man more used to the axe, than the pen, and the tankard than either. S.'s account consisted more in words than writing.

Court. The vouchers produced by both throw some light upon the subject, but our perfect knowledge

ledge of your characters throws more. When Taylor is sober he is civil, well-behaved, industrious, and well understands his business, perhaps too well for fourteen-pence a day, the price he charges. When he is drunk, which is as often as he can, he is a perfect noodle, but in both cases strictly honest. He never injures any man but himself. His weakness tempts others to injure *him*. Two requisites constitute a rogue, inclination and ability; he holds neither. When the character stands firm, it will support the man.

A different glass must be held up to view the character of S. Dark, shrewd, contemplative, he like Cassius, *designs* with caution before he executes. He possesses two requisites, at least, more than his antagonist. The strong in every species, overpower the weak. An account may be ravelled with design, that profit, as in cases of fire and tumult, may be drawn from confusion. While the simple reposes in his own innocence, he may be caught in the wiles of the crafty. From the accounts exhibited, and the characters which exhibit them, we may safely pronounce for Taylor.

LIX.

The Name unknown.

I shall introduce the following case with a proverb, a story, a metaphor, and two remarks; and close it with releasing its stubborn hero from the prison.

“He who digs a pit for another, may perchance
“fall into it himself.”

The story of Mordecai and Haman is exactly in point, but I shall wave it for another less known. When Edward VI. had suppressed an insurrection in Cornwall, Kingston, a provost, was sent with dreadful powers to Bodmin, and waiting on the mayor, told him he wished to have a gallows erected, for there must be an execution in town after dinner. The mayor gave the necessary orders, fixed his eye upon a neighbouring miller, whom he knew had been concerned in the revolt, invited the provost to his house, where they dined, and drank together as friends. After dinner, the mayor, impatient of delay, told the provost he had punctually executed his orders. “You will oblige
“me,”

"me," says the provost, "if you will lead me to the place," which done, "Is it strong enough," says the officer, doubtless, says the magistrate, "Then get up and try," says the provost. You are not in earnest ! says the other, "Indeed I am," replied the provost, "for you are one of the rebels, and the gallows you erected for another, is only for yourself," and immediately executed him.

Innocence is the surest guard. A man may fence himself round with thorns to prevent the approach of an enemy, but if attacked, that very fence may prevent his retreat, and the thorns wound him.

An ingenuous conduct will be more useful to a man, even in the day of distress, than subterfuge. Equivocations operate against himself.

John Flint was sued for 11. 15s. He applied to a Commissioner, and alleged the name was wrong. This is not a proper place, replied the Commissioner, to make an objection, you may plead the misnomer in Court, where it will be attended to. At the trial he made the same plea, when the Bench, of course, asked his name.

Flint.

Flint. I will not tell you.

Court. We have a right to know your real name, or we must proceed against you in this.

F. I am not ashamed of my name.

C. You are backward in owning it. Are you the man who owes the money?

F. Yes.

C. If you declare your name, we shall treat you with all the lenity your case deserves, if not, we will enter an order for immediate payment, in which case you will be sent to prison.

F. I will declare it when I please.

C. We have given the defendant every chance to prevent mischief to himself. He seeks another's destruction, but finds his own. The snare has caught him, which he laid for the plaintiff. If a plea like this was admitted, it would totally end all proceedings; a man need only allege his name is wrong, and justice dwindles into a shadow.

The Court made the order accordingly, and instantly committed him. He threatened for an hour, then mourned for many. Repentance ex-
cites

cites pity. The Court, touched with compassion, wished to release him, but were unable to revoke their orders.—From repeated applications they at length prevailed with the plaintiff to take his security for the debt and costs.

LX.

A Guinea lost.

If a man wishes to act as a Commissioner, and distribute justice among his neighbours, he cannot follow a better guide than common sense; this will lead him safely; instead of the blind leading the blind, his leader is within himself, and, like Argus, sees with a hundred eyes. Whatever is reasonable, is right. If he is attentive, he will sometimes meet with a lesson, useful in his future conduct.—I shall place the two following cases together, though they happened ten years asunder.

Bradbury sued a person whose name I have forgot, for 1l. 19s. 11d. which was denied. Both were vehement. Bradbury alleged near three pounds was his due. The Court entered upon examination, but could not discover so large a sum as the claimant demanded. Positive asser-

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tions prove nothing. I urged Bradbury, as the accounts were defective, and there did not seem so much due as he claimed, to be satisfied with a guinea, which should be ordered in his favour. To this he was utterly averse, and insisted the cause should be dismissed out of this Court, that he might severely handle his antagonist in another. The Court remonstrated against a conduct founded in anger, which would operate against himself.

As he urgently persisted in his request, the Court indulged him with a dismissal.

About two years after I accidentally met Bradbury upon the high way. "Sir," shaking his head, "I wish I had taken the guinea you advised me to take; I have since spent ten pounds after the debt, but have never been able to recover a shilling."

Perhaps this was a lesson to *him*—it was one to me; for I have ever since had an aversion to dismiss a cause to gratify revenge.

LXI.

The Cross Action.

When the wrath of man would not only consume his fortune but himself, lenitives are requisite. It would be imprudent to heap coals on a fire already too fierce.

Two people may live friendly, mix their property together, quarrel, and become inveterate enemies, and then, neither they nor any one else, can understand the blind state of their affairs, or promote peace between them; nay, every remark, and every account, tends to widen the breach.

Reddall sued Clare. The Court perceived they had been intimate friends, had placed an unlimited confidence in each other, had separated, differed, and had set no bounds to their quarrel. From the evidences exhibited, the Court could not perceive a debt existed. They dismissed the cause.

After a few weeks, Clare and Reddall sued each other at the same time. One demanded ten, the other twelve shillings. Two suitors are no more able to conduct themselves through such a cause, without a scold, than the Commissioners are able to prevent them. Both were roguish, and both were right.—After spending some time in a fruitless research, the Commissioners could not see reason to alter their sentiments.

Court. There seems but little between you except contention. There is more of dispute, than of debt. If we can cut off revenge, nothing will remain. As you have been friends in time past, try to be so in time to come. The first step towards an union, is to put a period to this quarrel. If there is a balance between you, it is very small, and that perhaps is in favour of Clare. We shall therefore make an order for one shilling merely to end the dispute.

Clare. What! will you give me one shilling, when he owes me twelve.

Reddall. I will never pay a shilling to a man, who owes me ten! The cause shall be dismissed. I will spend twenty pounds in another Court before I will be wronged in this.

Cl.

Cl. And I will spend thirty before I will be cheated by him.

C. If you have a large sum of money to spend, you cannot be taught a better lesson than how to keep it. It is a lesson you will never repent learning. You may want it for better purposes than to feed revenge. You are both heated, and blame us for what you will thank us when you return to cool reason. It is a duty to prevent even a madman from destroying himself, although he stands a chance to destroy another. The Court confirmed their order, and left both disgusted.

LXII.

Friendship destroyed by the Fall of a Tree.

A. and B. were intimate friends, and, like the two letters by which I represent them, were often together. Nothing gave A. so much pleasure as to be serviceable to B. and B. was happy to return it. Each consulted the other's interest the first of all things, *when it promoted his own*. A friendship is easily supported while it is the interest of both, but if a loss should arise that

will bear a dispute, it proves whether it is sterling. True friendship will take the loss to itself; false friendship will put it upon the other.

Our two friends being by trade "hewers of wood," A. purchased a tree at Burton-upon-Trent for four guineas, valued at twice that sum. Being willing to serve his friend, it was agreed, that B. should have the bargain, paying A. one guinea for his trouble, provided the tree should be worth the money. A. repeatedly applied for the guinea, which not receiving, he brought his friend before the Court.

It was allowed by both, that the tree was so decayed, it was not worth the carriage to Birmingham; that the seller at Burton had made B. a deduction towards the loss; that B. had offered A. two guineas to take the bargain off his hands, and yet his friend insisted upon one from him.

The tree being rotten, and the payment conditional, were two leading points, which being allowed by both, the Court dismissed the cause.

As I happened to be upon the Bench at this decision, I sometime after met B. Sir, says he, I am extremely obliged to you for not allotting me to pay

pay the guinea for the rotten tree.—“ You are under no obligation to me, the Bench did not decide to serve you, but justice; they do not study the man, but the cause.”

Soon after, I was attacked with great violence by A.'s wife, for the injustice I had done her husband. As I knew speaking was the female *fort*, particularly when virgin modesty was worn off, I suffered her to proceed without obstruction, and did not intend a vindication till she had exhausted her ammunition. But as I found she could keep pace with the sun, and hold out as long, I was obliged to silence her battery.

I perceive, Madam, that Mr. A. like other husbands, has told his wife but half what he knew; or, perhaps like other losers in the Court, has dwelt upon his own side of the question, till he believes it right, and with this partial side, has won his friends, to the prejudice of the Bench. But every cause which appears in Court, displays like Janus, two faces, which look different ways, plead in a different stile, and present different aspects; both are attended to there; but when the loser pleads his cause among his neighbours, he, like your husband, shews but one. The guinea

was not to be paid, except the tree proved a guinea better than the original price, in which case the Court would certainly have given it him; nay, had it appeared only five shillings better, they would have given him that five shillings.—“I ask pardon Sir, for troubling you, but my husband often deceives me.”

LXIII.

The Jew and the Christian.

The vast number of causes which pass this Court, open to the Commissioner, who is in the habit of attendance, a variety of characters, and shew him how they are influenced by their different religions. It is necessary, however, that he himself should not be within the reach of influence.

Out of the four religions practised in the world, I have seen many causes in which Jews, Christians, and Pagans were concerned, but I cannot recollect one of a Mahometan cast. This may be owing to situation, for human nature is the same: the Mussulman only differs a little from climate, and a little more from education,

We have the authority of Alexander Ross, "that every people are tinctured with a principle of devotion of one kind or other;" that even the pagans have their temples, and their objects of worship. These infidels are the most numerous among us; their temple is the alehouse, and their idol the spigot. We have no worshippers more attentive, nor need we wonder, for the idol never moves but in their favour. But as no religion can be conducted without expence, and as these devotees often shew an unwillingness to pay their share, application to the compulsive powers of the Court becomes necessary.

The Jews are a united body, and seem to retain but one maxim, which divides itself into two branches, to hold the utmost veneration for the ceremonial law, and the art of getting money. But the christians are divided into many classes; some of them have been as inveterate against each other, as any of the three religions have been against them. It is a singular pleasure, however, that this animosity wears off, though it is not yet extinguished. The Commissioner is not to make any distinction, but whether Jew, Turk, Christian, or Pagan, comes before him, to consider him as his brother. He must bear against errors of conduct, not against sentiments, or men.

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In every one of the christian professions, we find men of upright conduct, whose consciences will not allow them to venture beyond the bounds of justice, who fear an oath, and who only wish for their own. But a much greater number view things in another light; they may value religion, but interest lies nearest the heart. Touch the property, the mask falls off, and we behold the man. Nothing would be more common than for two antagonists to swear directly against each other, if the Court would allow it. But there is one christian sect among us, with whose general conduct I have often been surprized and delighted—the quakers. In their connexions with this Court, I cannot recollect that I ever found one of them wrong. He who is always right, should always succeed. One cannot peruse their institutes without being astonished to see how near perfection they have conducted that erring animal man.

A christian summoned one of the children of Israel, and desired the Court, with a significant smile, to take notice that his antagonist was a Jew. The Court, in return, desired him to take notice, that the declaration did not operate against the Jew, but against himself; that the Bench
were

were confined to the actions brought before them, and left the religion to the man.

The christian was a jeweller. The parties had agreed, that he should buy a watch of the Jew, value three guineas, and pay him in stone knee-buckles. When the christian supposed the Jew had sold the buckles, he sued him for 1l. 19s. 11d. as an overcharge for the watch, which he said had been valued at one guinea. No evidence appeared. The watch was produced, it seemed modern, but the Bench were not judges of its value. On the other side, an evidence for the Jew declared, he had seen the buckles, that the workmanship was exceedingly bad; that they fell to pieces without wearing, and that he could sell better at fifty per cent. under the price.

Court. Perhaps the case before us is that of a jew and a christian, who, not having the fear of any religion before their eyes, strive which shall over-reach the other. Truck is the most disreputable part of commerce, each side promises to charge the money price, but neither performs it. No man will barter away his goods if he can dispose of them for money, but defective articles rarely find a better market. He cheats, expect-
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ing to be cheated. Had the jew, or the christian, received the other's property, and refused to deliver his own, we should have enforced payment. But as each saw, received, and approved the purchase, each fulfilled his bargain, consequently nothing can lie against one more than the other; we shall dismiss the cause, and leave the parties to cultivate their talents for cozening.

LXIV.

Education.

Much of our prudence consists in properly directing children. Upon our nice management depends their happiness, and our own. If their conduct is erroneous, it is often owing to their teachers, who themselves, as well as the children they teach, feel the effects of a wrong bias. The prosperity of the next generation depends upon this.

A person was sued for twelve shillings; the debt was allowed. The Court, in such a case, seldom make farther enquiry; but the defendant
appearing

appearing very young, they demanded his age, which was thirteen, and he had lost his friends.

Court. It is always with regret, that we find ourselves obliged to assist one man to deprive another of his property. We can only be justified by necessity. We must become solicitors for the child before us, and intreat you to withdraw the action. His parents, who might have directed him, are taken away, and he is unable to direct himself. Prudence in a child is not to be expected. It would be cruel to punish him for not acting as a man. We all know a grey head can never be set upon the shoulders of an infant. Perhaps imprisonment would succeed our decision, which would reflect no honour upon you, and be a disgrace to us; we also know, a prison of any kind, is but a wretched school for a child of thirteen. You would, we are persuaded, rather lose the debt, than have his ruin laid to your charge. You would rejoice to assist in forming the man. A child is the property of his parents, whose duty and interest it is to conduct him; but if he has lost them, he becomes the property of society; every one with whom he has connexion should lend assistance. This is done by a multitude of ways, perhaps you have performed more than your part. He is now
thrown

thrown in our way, we must add our mite in his favour. A reform does not altogether consist in punishment, perhaps it has done as much mischief as good. That child often makes the best man, who is rather drawn than driven; we should guide him, without seeming to guide; the angler is not so likely to take his fish by violence as by art. Long and grave lessons lose their effect. Those instructions are the most efficacious, which are only hints, arising from little occurrences that daily happen. Comments upon actions, seemingly beneath notice, may be applied to useful purpose.

The plaintiff cheerfully consented to withdraw his plea, the clerks to remit the fees, and the Court recommended to the lad a return of gratitude.

LXV.

Complicated Rights.

One of the hardest tasks for a Commissioner, is to decide so as to satisfy all parties; perhaps he might as well attempt to still the winds. The next difficult task is, to render justice to all concerned,

cerned, this can only be done by a perfect knowledge of their rights, and a strict adherence to equity. A man's claim may only exist in his imagination. He may plead a prescriptive right, which in many instances ought to be allowed, because if this title is overthrown no better can be substituted. But in other instances, prescription cannot be allowed. Whatever is wrong in the beginning, is difficult for time to set right. If a man steals a guinea, it is no more his own, after keeping it twenty years, than the first day.

A person in the High-street, near the Old Cross, let the ground before his door to another for a stall, at an annual rent, of which 11. 8s. was due; this he sued for in the Court of Requests.

The plaintiff remarked, that his predecessors, and himself, had held the right of stallage, and received the rents time immemorial. The defendant acquiesced in the debt, and had often paid the rent.

Court. There are four parties interested in this cause, though only two appear before us; the public, the lord of the manor, the plaintiff, and the defendant.

defendant. Before a determination takes place, it will be necessary to examine the right of each. We are not to deprive the absent.

All common passages are the property of the public, and while they continue an inclusive occupation, can never be lost.

The power of the lord of the manor extends to the protection of this common ground for their service. He has no more right to take it from them than another man, and if *he* cannot claim, nobody else can. He can *remove* obstructions, but not place them. If another encroaches, he can connive at the theft, or he may dispose of it for money, but he can only sell *his* power, not another's. His forbearance may be lulled to sleep, by an annual rent, but this wink-money no way affects the right of the public. No length of time, nor lease granted by the lord, can deprive them.

On the other hand, neither time, nor forbearance can annihilate his right. A charter was granted by the Crown, long before the conquest, to enable him to hold a weekly market on Thursday. This was to answer two purposes, accommodate the public, and bring a profit to the lord. Any man has a right to deposit his property in
the

the market-place on Thursday; the laws of his country, and the lord, may protect him; and, if he pays his toll, neither can turn him out. The regulation of the market is solely with the lord; but he cannot even there choak up the passages, nor injure an inhabitant. Whoever pitches upon a public spot, in the manor, and deposits his goods for sale, is liable to pay a toll of one penny to the lord, hence the word *pitch-penny*; if this is in the market-place on Thursday, and he refuses to pay, the lord can instantly sell so much of his property, as will reimburse himself. If out of the market-place, or even in, except on Thursday, the lord can prevent him, by sending his goods to the pound, for laying a nuisance in the street, but he must release them paying the penny, and the expence; or he may take the penny without disturbing him. But the lord has no power to protect him, for the public, or the commissioners of lamps, who act for them, can seize the property, convey it to the scavenger's pound, and charge the trespasser with five shillings, and the expence. The lord cannot grant a privilege out of the market-place, his charter will not support him, if he could, he might block up any person's door. If a man pitches in the street, so as to annoy a resident, he is liable to an action of damage, or the resident may overturn the intruder's

U

goods,

goods, and let him seek a remedy, for the inhabitant has a right to his passage. If the lord, by his agent, should sue in this Court, for his pitch-penny, or his chief-rent, he would succeed, because they are his right, but if either he or an inhabitant, should demand rent for an encroachment, we should give it a negative, because neither have a right to *sell* that which is not theirs.

LXVI.

An uncertain Promise.

No man is so unfit to judge in a cause, as he who knows it best, the person concerned. A master of the subject is not to be trusted. If two men privately make a bargain, *they* only understand it's true meaning; if it succeeds, all is well, if not, a contest arises, and they who alone can throw light upon it, throw contradiction.

Podmore took a house of Kitchen, for his friend. Kitchin declared, he promised to be security for a quarter's rent. Podmore denied it. The friend continued in the house some time, paid no rent, Kitchin took a distress, sold up the goods, which being defective, he sued Podmore for 1l. 15s. upon his promise for a quarter.

The

The Court submitted the following question to their Clerk. If such a promise exists, to what quarter does it belong? It was justly remarked, in reply, it could not belong to the first, because that was paid by the seizure; it ought not to extend to a long futurity, because Podmore would never be free; there is a time when Kitchin ought to take the friend upon his own credit, and quit Podmore.

C. This dispute, which has hung long on our hands, rests but upon one single point, though we cannot remove it, whether a promise was given? The persons who *can* inform us, will not; nay, if they chuse to inform us, they might have accommodated the matter without us. They are both people of character, whose word we should not scruple on any other occasion; but as private interest staggers the credit of the man, we shall set aside their contradictory assertions, and view the matter in a probable light.

An evidence produced by Kitchin, proves some little in his favour, but it rather corroborates, than comes up to the question.—From our knowledge of his cautious temper, we can easily believe he would not let his house to the friend, who was a stranger, without some advances from

Podmore, who doubtless would stake some of his own credit, to strengthen that of his friend, and instead of our being surprised that he took so great a security as a quarter, we are rather surprised he took so little. — Podmore, when repeatedly solicited for payment, replied, “he expected to receive money out of the country, on account of his friend, when he would discharge the debt.” This shews, he considered himself in some measure responsible, or what right had he to part with his friend’s money? — We are further induced to believe, that Podmore would readily give his moderate promise for a quarter, because, by receiving this money, he held a collateral security. For these reasons we can easily suppose a promise was given, and as the matter is recent, we cannot suppose *that* promise cancelled by time, although the first quarter was discharged by the seizure; we shall therefore give judgment for Kirchin.

LXVII.

The Boarder.

Nothing quickens a man’s sight like interest; nothing blinds him so much. He sends up a keen look to profit, as his grand luminary, but

it dazzles him so that he cannot see the road to justice.

S. boarded with W. at eight shillings per week. During the connexion, he was absent a fortnight in the holidays among his friends. W. charged sixteen shillings for the two weeks, which S. thought unreasonable.

Court. Such a debt may be just or not, according to the original contract. If S. boarded by the year, no deduction can be made for the absence of a few weeks, because the lesser time is lost in the greater. If the agreement was made by the week, no allowance can be made during his absence for days, the same reason still operates; a soldier, who is the boarder of a day, is not allowed for a meal; neither can straggling days be collected to form a week; but if S. boarded by the week, and is absent a week at one time, he ought not to pay for that one. The loss can be nothing to W. because he does not provide for the absent man, but would be great to S. because he must probably return the favour to his friends, therefore must pay double. If S. pays for not eating, the profits to W. would be unreasonable.—As S. boarded by the week, he must not pay for the two in question, but as W.

kept the lodging on his account, he must not be a loser, we shall therefore reduce the sixteen shillings for board, to five for lodging.

LXVIII,

The Widow.

I shall place the four following cases together, because, like four sisters, they bear a family likeness. But if there is a sameness of feature, there may be a difference in conduct and fortune.

A particular attention is due to the fair sex; weak and lovely, they demand it. Their connexions with this Court are very frequent, and very loud, and though their fondness for speaking is a stagnation to business, for a riotous tongue is beyond the power of art to reduce, yet the Bench never retaliate, but give judgment with mildness; we could not live without the winds, why then should we quarrel with them for roaring; we consider it is their nature,

There is, however, a material difference between a favourable decision, and a denial of justice. If it is requisite every man should have his rights;

rights; it follows, every woman should pay her debts.

We part with our property as unwillingly, as a drowning man with his life, and like him, catch at every twig to save it. When our interest is concerned, we are seldom upright judges; the bias turns in our favour, and the judgment follows.

A person sued a widow. She replied, she did not owe any thing, her husband might have contracted a debt, but that was nothing to her, she could not pay his debts.

Court. Did your late husband leave any effects, of which you are in possession?

Widow. He left a few things.

C. Do these few things belong to you, or the creditors?

W. If I part with any thing I shall be ruined, and must, with my children, fall upon the parish. Besides, if I pay one, I must all.

C. We are sorry for your distress, and shall gladly relieve it; but whatever property a man dies possessed of, cannot belong to his heirs till

his debts are discharged; nay, the property you contend for, was not your husband's, it was the property of others, who deposited it in his hands upon his good faith, which ought never to be violated. If your doctrine was allowed, there would be an end of private credit, which is the life of trade, and a benefit to both. No man would be secure in his property, as all are liable to death. If you do not chuse to divide the effects among the creditors, those who apply first will be first served. You are not bound to pay farther than the effects he left will bear. If you afterwards acquire a property it is your own. We are obliged to make an order against you, but will remove all the evil we can by charging the payments easy.

Some object to the illegality of charging a widow with her husband's debts without an administrator, but the trouble of administering would be worse to the creditor than losing his debt, and hurt the estate more than paying it. If a summary method cannot be adopted, there had better be none. They farther object that the effects *only* are responsible to the creditor, and not the person of the widow, for the orders of the Court extend to both. But if the person was free, an order against the effects would be of little use, as she
could

could instantly protect them under sham securities. Besides, by possessing the goods, she holds a security for her person, for if taken, she can at any time free it.

To charge the payment in small sums encourages industry in the widow, and gives her a chance to redeem them. The sole intent of the Court is to give a man his debt in the easiest manner to the debtor, which cannot be accomplished by following the dull steps of the law.

LXIX.

The Female Note.

Right and wrong are divided by a most delicate, and crooked line. By its slenderness, it cannot be easily seen; by its crookedness, the premises of one seems to verge upon the other.

L. sued Hunt, for which debt he produced a note of hand; Hunt declared he never gave one. Upon examination the note proved to be signed and given by Hunt's wife.

Court.

Court to L. The debt may be just, and we believe it is, for we are too well acquainted with your probity to doubt it; but you cannot recover by this note. The giver has no power to give. The debt may stand without it, but not with it. It appears by this note, how difficult it is to keep that active thing called a wife within compass. But few women know their sphere, and but few men dare teach them; the full liberty of a female pen is dangerous. Though the laws allow our wives but a narrow latitude, yet the dear creatures know well how to wind round our hearts, to direct our persons, influence our conduct, and induce us to act under their direction. But if they were allowed to act of themselves, they might quickly sign away a fortune. The haberdasher and the china-shop would divide the profits of the week; their notes would be negociated through the hands of milleners and mantua-makers, till there would be *no effects*, and the notes would, like this, be returned, with a protest for non-payment. The use of the *tongue* is the province of a woman, not the pen; the first is a bubble, which begins and ends in air, let it alone, and it hurts nothing; but the pen, like the black, cloven, lower end of Satan, were it not prevented by power, might deal out destruction without mercy. Our love for the
sweet

sweet little dears will oblige us to set bounds to their conduct; we honour them, though we cannot honour their notes.

LXX.

The widowed Wife.

Perhaps we may safely adopt this plain maxim, If a man parts with his property upon the credit of another, he ought to have it returned, if it can be effected by any reasonable means. If this is allowed, it follows, that if the debtor has consumed the property trusted to his honour, his future time, his effects, and his abilities, in a moderate degree, ought to be responsible to the creditor. A man having spent all, is no acquittance. He who does mischief, ought to make reparation.

I have delivered the sentiments of the Court upon the two foregoing examples, the third is that of a wife, whose husband has left her. We abound with instances of this kind, some with children, some without. There is nothing she can call her own, but the arts of labour and imprudence. If the first of these will not supply the second,

cond, and it seldom will, the defect is made up by the labour of others. Every species of finesse is practised to over-reach those who trade in the necessities of life. She subsists by a little ready money; and a little credit. The money is temporary, the credit eternal. Her depredations are chalked upon every huxter's door in the neighbourhood; nor will she leave a shop while the master continues to chalk on; but the moment he desists, she sets him at defiance with an absent husband, and beats the bushes for fresh game.

Can it be sound policy in a government to shelter a person under the wing of the law, who designs to plunder? The husband has been gone many years, perhaps into another part of the kingdom, into Ireland, or the king's service; neither is it certain she has one; she has contracted the debt; how must it be paid? it is said every evil has its remedy, where then is the remedy for this? Why may not this widowed wife be considered as a single woman? It appears more agreeable to justice, as the husband is out of the question, to make her responsible for the debt who contracted it; nay, there seems a kind of injustice in charging the husband with an act in which he had no concern. There is a material difference

difference between obliging a wife to pay her husband's debts, and her own.

A person was sued for 11. 6s. in the name of Sufanna Bower ; it appeared her husband had been gone to sea some years, that she had since lived gaily with the money earned by the family, and that arising from the contribution under which she had the address to lay the huxters. She was well acquainted with the various methods of getting the effects of others into her hands, but not of returning them.

Court. Causes like this frequently come before us ; we behold them with concern, for the delinquent retreats triumphant. The laws of England consider the husband accountable for the debts of the wife ; though she is the sole actress, they do not suppose her to act. She enjoys unmolested the fruits of another's labour. The plaintiff is wronged without a remedy. Common justice directs that she who has done the wrong should make reparation. If she has no effects to accomplish this, her future talents, as in other cases, ought to be employed for that purpose. As this Court is detached from the law, we apprehend no evil could arise from a judgment against her ; but as the Courts above have not
given

given us a precedent, we shall not venture to set the example. We must, therefore, with regret, dismiss the cause, suffer the offender to escape unpunished, and the innocent plaintiff to be defrauded according to law*.

LXXI.

The Recruit.

The promises of a lover, and a wife, end in a breath. Both are believed—both are deceitful. They please the ear—they torment the heart.

A serjeant enlisted a fine young fellow as a recruit, paid him the bounty money, and like other serjeants, congratulated himself for procuring a prize. Matters passed for two days agreeable to all parties, when it appeared the recruit wanted nearly half of one of his feet, which rendered him totally unfit for service. The serjeant willing to

* A friend of mine, an attorney, informed me, since this book went to the press, that a case in the Court of King's Bench was lately adjudged against a wife of the Compton family, who had contracted a debt while in a state of separation from her husband. As such a decision is founded in equity, it will give a future turn to those of the Court of Requests.

recover his money, applied to a justice, who would have punished the perfidy of the recruit, as it deserved, but his mother stepped forward, and promised payment. All the money was returned except nine shillings and two-pence, for which the serjeant sued the father.

Court. When three people are concerned in a trick, it is no wonder they are too powerful for one. We make no doubt but the father knew, and approved of the mother's promise, though he made none himself. We should rejoice to assist the serjeant, but we cannot charge the husband with the engagements of the wife; he is accountable for her debts, but not her promises. He ought to pay, yet such a promise, if admitted, would draw after it a train of evils we wish to avoid. Though we dismiss the cause, there are two ways in which the serjeant may recover; he will find ample powers in a justice; or, if he brings the recruit, we can serve him. He did the mischief.

LXXII.

The Bankrupt.

It is not for every man to be rich, no more than for every woman to be handsome. Both may make some progress, by endeavours, but nature must furnish the fundamentals. Talents and opportunity must be given to the man, and a face to the woman. He can improve his talents, she her face. If nature will but cast the work, they can give the polish.

Should a man come to distress through rascality, he claims but little pity; we rather pity his creditors; if through inadvertency, he claims more; if through weakness of powers, for he is not always equal to the task, still more; but more yet, if through misfortunes. When this last happens, there is not, upon the face of the earth a set of people more compassionate, than those of Birmingham, I have written the two last lines with greater pleasure than any two in the whole volume.

While

Whilst a statute of bankruptcy was operating against Dick, he was charged in the Court with a debt of one pound ten shillings, being six weeks wages for an out-apprentice ; ten days were due before the commission issued, and the rest after. The plaintiff also insisted upon the boy's indentures.

The bankrupt pleaded that he was cut off from every commercial resource, that as all his property was taken from him, he had no means of paying his debts, and that he had no objection to return the indentures.

The Court asked their clerk, whether a bankrupt had power to release his apprentice ? who answered in the affirmative. But this was no concern of the Bench, because they could not interfere except in cases of debt ; otherwise one might remark, if a statute strips a man of his whole property, it must take his apprentices, for they are often valuable. If the insolvent has a power to *give*, he has a power to *sell*, and if this power extends over any part of his effects, where does it stop ? the commission is defeated.

Court. The moment a statute works, it divides a man from his substance ; he can call nothing his own ; his estate contracts no debts ; if he enter-

tained a journeyman by the week, or year, that man can make no after claim; the interest of all the money he has hired ceases to grow, consequently the defendant before us is only chargeable with so much of this debt, as was created before the issuing of the commission, which is eight shillings.

The defendant drew out the money to discharge it, but was informed, the place of payment was the office.

A young attorney, who had business of his own in the Court, wishing to exhibit his abilities upon questions which came within the pale of his profession, observed, that the Bench could not make an order against the bankrupt's goods, because they were possessed by the assignees; nor against his body, for that was protected by the commissioners, nor could he pay money, because that belonged to the creditors.

No man is so likely to lead us wrong as he who is best able to lead us right. He who is fond of setting a point in new lights, is apt to set it in erroneous, he supposes himself bound to treat it differently from others. An attorney considers finesse as the soul of his profession, these two adhere

here as closely to each other, as the orange and its peel, which can scarcely be separated without a fracture. I have kept an eye upon these gentlemen ever since I was duped in the case of the *oppressed suitor*. Many years before I sat in this Court, I had a tenant who rented a house of nine pounds a year, he removed his goods, shut up the house, and left it in November, but kept the key till Lady-day. I considered myself entitled to half a year's rent, but sued him for 1l. 19s. 11d. The Commissioners, who ought to have found a judgment of their own, gave a glance at their clerk, for his, who remarked, "As the tenant resided but half a quarter in the house, he ought to pay but half a quarter's rent," which was ordered accordingly. I was surprized at this unjust decision, particularly as it originated from John Wheeler, an attorney of eminence, and in full practise.

The Court observed in reply to the young attorney's remarks, that they could not make a partial decision, their sentence must run as usual, against *body* or *goods*; if the defendant possessed no goods, none could be taken, but if he acquired any before he procured a certificate, they would be amenable to the order. That a protection from the commissioners was only temporary, but the

orders of the Court continued for life, except cut off by the certificate; for till this is obtained, the bankrupt is chargeable with all his debts; and that it was of no consequence with what money he paid the debt, he must settle that point with the assignees.—We are sorry for the unfortunate, but we cannot refuse justice, where justice is due.

The Second Example.

Every man has the same right to justice as to the air he breathes. If the line which divides property, is not exactly drawn, it is no longer the line of equity. It is allowed, “a debt once contracted, “is a debt till paid,” then those harsh words, *cruel, stern, and obdurate creditor*, often rung in our ears, are misapplied. If one man draws into his hands the property of another without a return, he injures him; which then of the two has a right to complain?

There are two ways of cutting off a debt without paying it, exclusive of those mischievous things called acts of grace, the statute of limitations, and that of bankruptcy; both were meant for common utility, but both are perverted to an evil. The first

first was intended to prevent false, and obsolete claims, to tie the hands of fraudulent and designing men; but the modern use is, to plead it against paying a just debt.—The second, was designed to free the innocent, who, being unfortunate in tradé, fairly resign their all. When this happens, the bankrupt merits pity, and always finds it. This old fashioned case still occurs in some few instances; but, as every fashion changes with time, the modern run of bankruptcies operate differently, both upon the debtor and creditor. The insolvent wishes to keep what he can, and resign to the assignees what he cannot keep. He finds the commission, a plaister which cures every defect in his former conduct; a bewitching charm which rids him of every shackle. From a commercial cripple, he finds himself able to walk upright. It becomes an effectual pill, which though administered by an *attorney*, purges off all his accumulated errors, except the rascality of his heart; a pill, which by cruel sympathy, makes many a stomach sick, but not his own. It throws off his back a heavy burden of debts, and enables him to skip lightly, like John Bunyan's pilgrim, when his bundle fell. But the creditor is far otherwise affected, for the diminutive tin-box, containing only a commission, to which hangs

pendent, the Chancellor's seal, is to him as full of evils as that of Pandora. It transfers a gloom from the bankrupt's face, to his own. It becomes "a great gulph," for ever fixed between him and his property. It may oblige him to drop an oath, a tear, to sell his horse, and curtail a dish. It tends, however, to clear his sight, for he plainly perceives he has laboured many years without profit; that what should have supported him in age, is lavished by the hand of fraud. It follows, as all injuries demand reparation, if the insolvent cannot discharge his whole load of debts, he should not be screened from discharging a part? If he has robbed his creditor of that peace which he cannot restore, he ought, by his future abilities, to pay him as much of the debt as he can. No plan is so likely, as that of reparation, to benefit trade, to lessen the number of bankruptcies, and to be opposed by the attorney.

L. being 6l. 14s. 2d. indebted to H. urged his inability to discharge it at once, it was therefore agreed between the parties, that L. should give his note to pay the debt without interest, at four instalments, six months between each; two of them were paid, the third became due June 1, 1786. After a few days L. declared himself a bankrupt,

bankrupt, consequently the third instalment seemed for ever deposited in the tin-box.

As the body of the creditors considered the commission in the light of a white-wash, they gave up their debts for lost, and did not attend to prove them. No dividend was expected; L. began business again, and H. brought him to the Court for 1l. 13s. 6d. L. sent one of his attorneys to tell H. "he was throwing his good money after a bad debt, for his certificate was obtained." As H. doubted the assertion, and knew the Commissioners would expect to see it, he did not withdraw the action.—At the trial it was produced, dated September 1, which cut off the claim. But it appearing that L. a few days past, had promised to pay H. *when he was able*, the Commissioners considered this a revival of the demand,

Court. Your subsequent promise has chalked up that debt which the certificate wiped off. The measures of your ability to pay, can only be known by a trial. We are bound to make an order, and the word ability, will be considered in the mode of payment; this shall be entirely referred to yourself; whatever monthly sum you mention shall be recorded,

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L. chagrined at the disappointment, would not name any; the Court therefore ordered five shillings a month.

LXXIII,

The Bench formed.

The man who acts in a public capacity, holds himself up to public view. His actions are scrutinized, and though he proceeds according to the best of his powers, is often condemned. To *act* is to displease. Posterity will do him the justice he deserves, for they never err, but his contemporaries "see through a glass darkly," the hand of prejudice presents to the jaundiced eye a false medium. What character has been more traduced than Lord Mansfield's? What character has less deserved it? Before a man steps into a public walk, he may "sit down," and ask himself this question, or if he stands, it makes no great difference, Can I be contented to do good, and be evil spoken of? If he cannot, he had better rest in a private station; if he can, let his labour be that of rectitude, and let him trust to the next generation for his reward.

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I have known a cause very near taking a wrong bias by mere bully, "the voice of words," has stifled that of justice. The Commissioner who suffers himself to be guided by sound, without argument, displays a weakness unbecoming the Bench. Every evidence has been in favour of him who had not the gift of speaking, while vehemence without right, has borne down the man, and influenced the Court.

A tenant in arrears to his landlord, who was a quaker, persuaded his father, and that father's friend, to give their joint note for 1l. 12s. to prevent a distress, this appeased the quaker till more rent became due. The father afterwards sent 1l. 11s. 6d. to the quaker. The quaker sued the friend for the 1l. 12s,

The question to be considered by the Court was simply this, whether the quaker was obliged to appropriate the guinea and a half towards the note, or had liberty to charge it for subsequent rent?

The friend, who was a butcher, offered many words, without one reason; he treated his antagonist with as little ceremony, when in Court, and the Commissioners themselves, when out, as the

the cattle he slaughtered, "they must have a feeling in the money-box, or they could never determine against him. They could not understand the case, neither would they hear it."

Happy is that Commissioner, who, upon the review of a determination, feels no reason to repent it, but while the storm thunders round his ears, can take peaceable shelter in his own breast, and smile at the tempest.

Many accusations lie against the Bench; the chief is, that as one of the parties only can win, the other supposes himself ill-treated, therefore accusation will lie against them till they can find a way to satisfy both; another is, *they will not bear the loser*, but does it follow they are bound to hear from him the same sounds continually repeated like the horrid midnight notes of a pair of cats making love. I never knew an instance where the Commissioners finished a cause while the parties had any thing to offer; but perhaps they are justified for putting an end to the contest, when the complainant, for want of new matter, repeats the same thing twice over.

The Butcher, fond of speaking himself, would not suffer another; the Court, therefore, could only

only remark in broken sentences. That no mention being made, for what use the money should be appropriated, left the quaker at liberty; that if the money was meant to discharge the note, why was not the note demanded? that the sum sent, was not the sum mentioned in the security, therefore could not be considered an equivalent; that the note was given because the tenant owed the money, and as he still owed it, why should the note be cancelled? If the tenant had ever been out of the quaker's debt, the note would have been invalid, though not taken up, for it ought not to have its strength renewed by a second debt, without a second contract; but as it was given because money was due; and that money remained due, they could have no pretence to destroy it; for these reasons they considered themselves bound to decide for the quaker; and the butcher will recover from the tenant.—
 The decision left the butcher in a flame, the father and mother breathing a spirit of revenge, and the Commissioners never to be forgiven.

LXXIV.

The Coat and many Owners.

Pemberton was a stranger, of a moderate capacity, about fifty, had married a girl of twenty, who appeared handsome, modest, and agreeable, but not much wiser than her husband. She had never seen the world, and he was never able to see it. This loving couple, with one child, in 1786, came to seek their fortunes in Birmingham, and took up their abode in Moor-street, in a den of thieves. The husband was easily enticed to get drunk, and treat the whole crew, which expence, with three shillings borrowed by Hill, broke him. Hill then persuaded him out of his coat, which he gave to A. and he pawned it to B. C. fetched it out of pawn, and sold to D. for two shillings and two-pence. D. having mended it, sold it to E. for four shillings, and perhaps this hackneyed coat, in a fortnight more, would have travelled through the whole alphabet.—Pemberton sued Hill for thirteen shillings and six-pence, half a guinea the coat, and three shillings borrowed.

Money is the grand-standard to which all property is brought to find it's value ; this is the only
certainty

certainly we know; and except property of every kind, has been tried by this standard, it cannot be pronounced a debt, nor recovered in this Court. If Pemberton has a right to charge his coat at half-a-guinea, why not at half a score? If the bounds of value are not exactly prescribed, those bounds, like space, become infinite. Had Pemberton been defrauded of his coat while new, it would have borne a certain price, but becoming second hand, that certainty ceases; the Bench cannot treat it as a debt.

All the parties appeared; some of them I knew had practised the arts of deception for thirty years. They spoke loud in favour of themselves, as people usually do, whose actions will not speak for them. They alleged against Pemberton, that he was a *foreigner*, and a *papist*.

Court. As he who wilfully sets the house in a flame, is the first to cry out fire, so he who *injures* is the first to censure the injured. Pemberton being a stranger, should have taught you another conduct. A stranger is entitled to our civility and protection, but you consider him an object of plunder. You also accuse him of being a roman catholic, this proves nothing against *his* religion, but much against your own, for it proves a protestant.

a protestant is both able and willing to rob a papist.

We direct, that E. shall relinquish his four shilling bargain to D. and that D. shall return the coat to Pemberton, paying her three shillings, two shillings and two-pence for the purchase, and ten-pence for mending, which being paid on Hill's account, brings the coat to the standard of value, and adds three shillings to his debt, we shall therefore make an order against him for six; and recommend a lesson, he will never learn, to shew kindness to strangers, and justice to all.

LXXV.

The Cloud of Witnesses.

Evidences, like snuffers, were intended to improve the light, but like them, they often extinguish it. Cut short by the bungling hand, and hid in darkness, neither the cause, nor the candle can readily be lighted again. If only two antagonists oppose each other, the dim subject is confined to a narrow compass, which the Commissioner can better inspect, but if each adds his man, the case becomes more complex, and by multiplying

multiplying evidence, confusion is multiplied. A dozen of ale is able to produce a dozen of voices; each follows his principal, and totally obliterates intelligence. Instead of the Commissioner being assisted by the light which others can throw upon the subject, he is obliged to extinguish their light, and follow his own.

Hill drove a hackney coach, and kept, or rather starved, a pair of horses. He declared he had taken a stable of Mills, at one shilling a week; that Mills was to find straw for his horses, in consideration of the manure they made; that he being in arrears for rent, and Mills for straw, he had purchased as much as cost him twenty-five shillings, which he expected to set off in the rent, when they reckoned; but Mills taking a distress, and recovering the rent, he now sued him for the twenty-five shillings advanced for straw.

This smooth tale was flatly contradicted by Mills. After the two chiefs had maintained the conflict with equal bravery, each drew up his battalion of evidences, which supported the contest with fury, but victory declared for neither. The Bench could plainly perceive, that when the parties engaged, had exhausted their ammunition, each had his corps of reserve, ready to march up
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to renew the attack. They could also perceive, that after three long examinations, the cause unravelled upon their hands.

Court. We are got into a wilderness barricaded with evidences; every one of them knows a way out, and would willingly lead us, but the farther we proceed, the more difficult the road; we will retreat to the ground from whence we departed. Nothing has been proved but contradictions. We dare not administer oaths, they are too sacred to be trifled with; both sides would willingly take them, for he who publicly *asserts*, will publicly *swear*. But as neither their words, nor their oaths, elucidate the case, we shall set aside both, leave them to enjoy their purchase-pot, and proceed upon our own judgment.

That the stable was taken at a shilling a week, is allowed by both, consequently Mills had a right to his distress. The whole weight of the matter, consists in the bargain for straw. If we attend to the present scarcity of that article, we cannot suppose such a contract to exist, because the straw would be four times the value of the manure. If we farther consider the hungry state of the poor horses, and that Mills must find straw for the inside of the belly, as well as the out, a thought that

that could not escape him, we must suppose him, before he could ratify such a bargain, weak enough to give ten shillings for one. Our decision, therefore, will rest upon this short question, as Mills furnished some straw, and received some manure, how much was he benefited by this exchange of property?

Both parties being taken by surprise, were unprepared for an answer to this simple question; it was treated as comprehending mysteries never meant; all were willing to misunderstand it; the fear of being caught, brought out replies, foreign, or evasive, and this little question, "being commingled about by so great a cloud of witnesses," was with great difficulty preserved by the Bench, from being lost in obscurity. From the best intelligence they could obtain, the difference might be about five shillings, which was ordered in favour of Hill.

LXXVI.

The Slippery Club.

Gentle Reader,

Every publication should answer some end. I have no right to trespass on your time, without
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paying you, in pleasure, or in profit. If I do neither, I shall be thrown aside, like some of my predecessors, ministers of the quill, and buried in the dust. Some authors exult, if they are clothed in gilt binding, and exhibited to view, but it is doubtful whether there is not more honour in being frequently thumbed. Enjoy, my dear brethren, your finery; I, who prefer dirt within, to gold without, shall be satisfied with soiling fingers, and with dog's ears. A book, like a beautiful apple, may tempt the eye, but the taste may prove insipid; if a flavour is not found under the rind, the fruit may be cast away.—There are some bewitching authors, who possess the powers of making the reader forget his time, his food, his sleep, and even himself. The writer, and the reader, like two pieces of money from the same stamp, are equally impressed; as two eyes in one head, they behold every object in the same light, with the same effect, and both *feel* what they see. Fascinated with the voice of the charmer, the reader is unable to depart. Insensible of the pinching cold of a winter's night, he feels no pain, but when his candle draws to an end.—But alas! the ground on which we tread is sometimes too barren to please; no delightful landscape is seen, nor beautiful flower can grow.—Nothing tires like a dull tale, and no tales are so dull as those
of

of the law, upon which I verge.—If there is merit in setting a subject in a new light, I exhibit a title, for mine has never been placed in any. Whether I put on the smile, or the frown; whether I amuse you, or only myself, or whether neither, yet, when I am upon the Bench, may my eye be upon equity, and when off, upon truth; this is the merit I wish.—It is long since I laid before you a club cause, although they are so numerous, and various, that they alone, under the diffusive pen of James Sloss, would fill a volume, that would load a cart.

I heard a gentleman remark, forty years ago, after he had remarked upon the world threescore, “that bodies of men were rogues.” When a man acts singly, he alone is responsible, fear guards his honour, but when in company, he shelters himself behind numbers. I remember a body of seventeen, “all good men and true,” who met upon public business. They unanimously passed a vote, which being afterwards deemed unreasonable, they were rather ashamed, but before that vote was one week old, sixteen disowned it, and each charged it upon his brothers, and as only one was found firm enough to acknowledge it, the whole odium fell upon him.

When people act wrong, the pulpit is designed to *lead* them right, or the laws to *drive* them, but there are cases out of the reach of both.

One would think there could not be a more simple, or beneficial contract, than a body of men engaged to support each other in sickness; and yet, in the day of trial, they slip like eels through each other's fingers. The ties of honour, conscience, law, ridicule, or the pulpit, are as easily broken through, as Sampson's withies.

A club can bear a sick member quartered upon them for two or three weeks, but if the box is likely to become an inheritance in tail, every subterfuge is tried to promote a separation; no matter how dishonourable the means, if the end can be attained.

A slippery club as sick of a member, as he of a disease, with-held his weekly pay, and declared he was no longer one of their body. He sued the stewards for 1l. 8s. for four weeks.—Interest was privately made to the Commissioners, by the friends of the sick; perhaps he was in their debt, and also by the overseers, who wisely judged, if he was not fixed upon the club, he must be fixed upon

upon them, therefore both gave him an excellent character,

The answer given to these solicitors was, that the cause would be tried by the laws of the club, which would be called for; that if he had failed in any point, he must submit to the consequence; that they could not be partial to either, and that where facts could be ascertained, they paid no attention to characters, a rogue was as much entitled to justice as another.

About ten members appeared at the trial, to bear down the sick man; they alleged, he had lost his right, by being intoxicated with liquor, while dependant upon the box, they mentioned the time, and the place, and treated him without ceremony, or mercy,

In reply, the father, at whose house the club was kept, observed, "the liquor was drank at his house, which was no more than a draught of good beer, which he gave the sick man, who being in a weak state of body, it might rather enliven his spirits, but he was not the least intoxicated." Three others, who were not members, corroborated this evidence,

Court: As the plaintiff carries evident marks of sickness, he is entitled to the care of his fellow creatures, but, when poverty attends that sickness, they shun him. Packed, and in full cry after him, the members hunt him down. His friends and the parish struggle to avoid him, and, like a run deer, will suffer him to herd with neither. All who appear against him, are members of the club, whose interest in the cause weakens their evidence. On the other side, the father, and three indifferent people, unite in one voice to exculpate the sick. Reason also pleads on the same side. As he spent no money, the landlord was not likely to give him a large potion, except with a design to trap him, which is not probable, because he appears in his favour. We cannot think of excluding a man for taking that nourishment, requisite for support, therefore shall enter an order in his favour.

The pursuers, disappointed of their prey, opened with violence. They would neither pay the money, nor own the man. The Bench expostulated upon the cruelty of their conduct, and asked, what would be their thoughts on the subject, were they in the sick man's place? If you deny necessaries to the afflicted, you will no longer merit the name of a *sick* club, but the club of

of death.—Reason, however, could not prevail against interest; the next club-night they suspended the stewards, and elected two others, who resided out of the jurisdiction of the Court, thus the afflicted was cut off, for he could not be assisted by equity, and the laws of his country were out of his reach.—He died a few weeks after.

LXXVII.

A Battle for an Hour.

There is a monopolizing spirit in man, which tacitly says to the Bench, “you shall hear no cause this day but mine.” The crowd may sacrifice their time, and the Commissioners their dinners, without one relenting thought from two quarrellsome suitors, who violently dispute “at which end an egg shall be broken.”

The Court may see an evil, without being able to remove it. There is a punctilio in some cases which cannot be given up. One man may work for another till he has a just demand for eighteen shillings, he may sue him, and miscarry, although the debt is acknowledged by both. An obstacle

arises between them, which prevents their approaching each other.

J. G. Esq. agreed with Messrs. R. and H. for a quantity of lime. He wished, also, to agree with them for the carriage. They replied, they had nothing to do with the drawing. He requested, as the carriers were imposing people, they would take that part of the business upon themselves, and charge him with the whole under one head.

Their bill, amounting to nine pounds, was afterwards sent in without the carriage, but returned to have it inserted; when, upon their application to the carrier for his charge, the bill was sent a second time with twenty-four shillings for carriage squeezed in as a bottom line. G. deeming this exorbitant, refused to pay it. The carrier brought him to the Court.

All the parties appeared. G. alleged, his agreement was with R. and H. that he never employed the carrier, that he had no objection to pay a reasonable price, and produced receipts, which proved he had had the same work done for fifteen shillings.

R.

R. and H. replied, they had no claim upon G. that the money was due to the carrier, whose charge was just, and that the current price from their wharf, which joined the town, was two shillings a cart-load, whether taken into the first street, or to the extremity of the buildings, about a mile and a half,

This plain case, which might have been understood and determined in one minute, and which consisted of only two simple questions, what money was due? and who ought to pay it? robbed the Bench and two hundred people of an hour.

It is irksome to behold persons of fortune, character, and sentiment, whose general conduct is irreproachable, so far forget themselves as to descend to personal recrimination. G. accused H. of a northern spirit, and significantly observed, — “his reasoning might pass currently on the other side of the Tweed.”—But can it be a reproach to a man that he was born in such a country? It was no act of his own, consequently no blame can follow. He can only be accused of faults he has committed, or that are in his power to cure. John Wilkes was never nearer losing his argument, than when he accused Lord Bute of being a North Briton.

Briton. A Scotfman has the fame right to breathe the air of England as an Englifhman, nor does he ever appear fo little, as when he boafts of his country. The love of our country does not confift in keeping the ftranger out, but in treating him kindly when he comes in. The world was made for man, and where is the law that confines him to one fpot ? If he herds with the tygers in Africa, his reasoning may be called in queftion, but if he affociates with man, he is ever at home, and his arguments are admiſſible. When nothing can be alleged againft him but his country, it indicates his character ftands fair. If a man quits the place of his nativity for another, he pays a compliment to that other, and if he fubſiſts by his affiduity, he becomes a benefit, for the riches of a nation are the multitude of its people. Our *religion* and our *country*, though common words, are of vaſt import, and but little underſtood ; our religion is what *we* chuſe, not another ; and our country, *The world*.

On the other hand H. charged G. “ with a
 “ parſimonious temper, which prevented the op-
 “ rations of juſtice.”——But it appeared to the
 Bench, that G. was over-charged, and every man
 has a right to defend his property by the laws un-
 der

der which he lives. If one man defrauds another with impunity, it is an encouragement to defraud him again.

The parties were vehement, and like two pots boiling over at the kitchen fire, violently discharged their foaming wrath at each other. The contest was not confined to the fury of the chiefs, for each drew up a platoon of auxiliaries, who kept up a continual discharge at each other, till their thunder affecting the weak heads upon the Bench, they entreated silence. Silence was promised, but, like the promise of a lover, was forgotten in a moment. The Bench then *commanded* it, but were no more regarded than Canute, when he commanded the waves. The carrier was the only injured person, and he alone was silent.

Court. The commissioners of lamps have power to divide the town into districts, and to fix the prices for carriage, according to the distance carried, which is a good custom; it follows, that the demand of two shillings a load to any part of the town, must be a bad one, which the Court ought to use their endeavours to break; for if two shillings pays the carrier for going to the extremity of the town, he must be over paid for only going into one of the first streets, where G. resides.

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Were we to decide this contest, we should suppose eighteen shillings a reasonable charge. But though the money is due to the carrier, and ought to be paid by G. an obstacle in the form of a middle person arises between the parties, which excludes our proceedings. R. and H. by the bill sent to G. make him debtor to them for the carriage, and he acquiesces in the charge, and as the carrier was never employed by G. his claim is for the present suspended. We shall therefore dismiss this important cause, which has staggered the abilities of the Bench, and exhausted the patience of the suitors, for the moderate price of six-pence.

The next day G. applied to me, and asked, If he paid R. and H. their full demand, whether he could recover back the surcharge?

As I did not possess the gift of prophecy, I could not answer the question. There was no ascertaining the temper of the Bench, nor what new lights might arise from a second hearing; besides, I could not justify countenancing one person in the absence of another. A Commissioner ought not to declare that in private, which he may justly declare to the world; he can scarcely give advice to one without injuring another; it has the appearance of taking one side; whereas,
like

like the hand, he should only hold the scales ; he should carefully examine the contents of both, but influence neither. If a man through ignorance, or inadvertency, pays more than he ought, the Court will assist him to recover it, but if he pays it with his eyes open, that the Court may bring it back, they perhaps will dismiss the cause ; the act was his own, and he must take the consequence ; the Commissioners will not, like puppy-dogs, fetch and carry for every whistler.

Had the parties been together, and wished an opinion, I might as a friend to both, have delivered mine as follows : Let G. pay the carrier eighteen shillings, as his work deserves no more, he ought not to have more. If this is declined by either, compulsion must ensue. The carrier, as appears by the trial, cannot sue G ; R. and H. cannot sue him, no debt exists. But if they pay the carrier, it creates a debt, and a right of suit. Or, if they refuse, the carrier may sue them, and if no objection is made at the trial, will recover the sum demanded ; but if there is, the Court will fix upon what seems reasonable, but whatever they pay the carrier, they will recover from G. If in the last instance, it shall be found that G. pays more than is right, he may recover it back from the carrier, but not from R. and H.

LXXVIII.

Wages.

Of all bargains verbal ones are the most numerous. They are the most flimsy. Like a shadow, they leave no traces. They are fabricated by the mutual interest of two parties, they are broken by the interest of one. While two people are forming an agreement, common prudence, founded on the secrets of trade, prevents the accession of a third person, so that if future disputes arise, both deal in contradiction, but neither can produce evidence; the Court, in such cases, have nothing to guide their decisions but common sense, aided by the stile and manner of the parties; but this will often lead them right.

Genius is continually in action. New branches of manufactures daily arise to supply the wants, or gratify the taste of the times. The words of the prophet are applicable to the people of Birmingham, "They have fought out many inventions." The price of a new-born fashion runs high. The profit of the journeyman bears a proportion

proportion to that of the master. If the former can earn three or four guineas a week, in the first career of sale, those earnings gradually decline till they are reduced to the hackneyed level of common productions. This fluctuation of wages is a constant source of wrangling between master and man. New work, or new methods of working, demand new prices.

A girl employed in the shops, complained that her master had given her eight shillings less than they agreed for, or than he had given for the same work.—He, in vindication, first wrote to the Bench, then appeared in person, afterwards produced his book-keeper, and he his books, all which tended to prove, that he had had the same work done for the price he offered. But though no evidence could speak to the bargain, or to the money paid her, yet the Court, by the manner of the girl, which seemed to carry conviction, and by that of the master, who studiously avoided a leading question that might turn the cause against him, thought an agreement existed between them.

Court. There are two ways, and only two, of ascertaining the price of labour, an agreement between

tween the parties ; and, where this is wanting, the common usage of the trade. If such agreement was made, though unreasonable, it must be adhered to, provided the parties were *compos mentis*, and at full liberty. It was their own act ; the Commissioners do not hold themselves authorized to break it, for it would display a stretch of power they have no right to use, it would lead them beyond the bounds of justice ; besides, the precedent would be dangerous, for if they can dissolve one bargain, why not another ? A man may injure himself by his own act, but another has no right to injure him. If a journeyman brings in a gross of buttons, for which he has always received two shillings, the master would think it absurd if he demanded three ; and the man might deem it equally absurd, if the master would give but one. Both are unjust. One of the parties may dissolve the contract before the work is *begun*, but when finished, no alteration can take place without the consent of both. If the master has a right to abate a penny, why not a shilling ? nay, at what point does his power stop.

But if no prior agreement was made, and a dispute arises, the value of the work must be determined by common usage. The highest and
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the lowest price ought to be rejected. A master, through ignorance, may give more than the value, and a journeyman through pinching want, may labour for half price. A gardener very recently sued his master for eleven shillings, which he supposed remained due for digging 130 rood of potatoes, at eight-pence. The master declared the same work had been done for seven-pence, that he agreed with him for seven, and had paid his full demand. But as this agreement could not be proved, and as some little circumstances turned in favour of the gardener, and as eight-pence appeared a common price for such kind of land, the Court awarded for the gardener. There can be no evil in paying a man the value of his labour. Although, in the case before us, there is no positive proof of a bargain, but the oath of the girl, which, by the way, is no proof at all, yet there are many reasons to believe such a bargain existed, but was broken by the interest of one party, we shall, therefore, order payment.

LXXIX.

A Club conducted without a Man.

If we see a bargain made between two heads, and we may see five hundred every day, we may safely conclude it originates from self-interest; this is the enlivening principle which warms into action; the hinge upon which we turn—the pole to which we point. This motive influences every man, from Richard Duke of York, who bargained for a kingdom, to John Byard who sells a farthing candle.—But when we see an *absurd* bargain, we may easily trace its pedigree to a weak or a roguish head. If an extra advantage lies on one side, inability is sure to lie on the other.

A Taylor, who by the size of his body, seemed in reality but the ninth of a man, and to possess but a ninth capacity, found means, through pity, to assemble a few friends, and erect a clothes club. They were to meet weekly, spend two-pence, and contribute a shilling to the box. When the box became ripe for a ballot, the winner might purchase a suit of clothes, of a certain value, where he pleased,

pleased, but the taylor had a right to claim the making, and charge twelve shillings.

A fortunate member instead of giving the taylor a *suit* to make, gave him only a coat and breeches, for which he paid him nine shillings, and the taylor brought him to the Court for the other three..

Court. All societies of men, whether they compose a powerful kingdom, or a petty club, are governed by their own laws, but laws without punishment, can no more be productive, than a tree without a root. It is enacted in the case before us, that the member shall employ the taylor, but where is the infliction if he does not? This Court has always countenanced social compact, but our decisions are often prevented by their weak, or absurd laws; nor can we wonder, for if 558 members, which compose the House of Commons, are not able to guard a law, how can it be expected from the ninth of a man. Had their articles, upon non-compliance, demanded a forfeiture, the road would have been open before us. There are other inducements to dismiss the cause. As the taylor did not do the work, it is not reasonable he should be paid. No debt exists.—Again, if we order payment, the member will pay for what he never received; and if, in future,

the taylor refuses to work, the member can have no remedy, for the power of the Court will be cut off by a decision ; we therefore advise him to furnish the taylor with materials for a waistcoat.

LXXX.

The Coffin.

Perhaps a man might be found who would pay no money with so much willingness as that for a coffin for his wife. Perhaps another might be found, who would better relish the coffin, than the pay ; and a happier third, who would wish for neither. When a man longs to introduce this kind of furniture into his house, it looks as if matters had not passed very agreeably. Meeting the lively Mr. J. H. in deep mourning, I expressed my concern, and enquired with diffidence, which of his family he had lost ? He replied, with a smile, “ I have only lost my wife, tol lol, der ol ol, der ol lol”—and in two months picked up a second.—Perhaps a fourth person might be found who would make ample promises to the dear nymph before marriage, of the rectitude of his conduct, and farther promise a hundred guineas to her confident, and a silk gown to her maid,
for

for *selling* him a bride, but *be* as *fluggish* in discharging the these debts as those of her funeral, although he looked forward with equal pleasure to both.

G. having lost his wife, applied to his brother, who was a joiner, for a coffin. The brother, for reasons best known to himself, told A. another master joiner, that *be* might execute the order.

Let us then suppose, what really happened, the business done, the wife interred, joy possessing the inside of G.'s breast, and black cloth the out, the brother broke and fled his country, the coffin unpaid for, and G. brought to the Court for the money,

G. urged in pointed terms, that he never employed A. that he had paid his brother for the coffin; that it was nothing to him whom he employed, that if they two agreed about the work, as he had no concern in that agreement, heought to have none in its consequences; that if he was open to a claim from A. he was open to every other person for business transacted, therefore no man could be secure in his property.

I have already remarked, the decisions of a Bench should ever be the same. The out-lines of a case similar to this, but less intricate, is described in No. III. *The Man deceived by himself*, which was determined, as it ought, in favour of Baskerville, how then dared they pronounce a contrary judgment! The Commissioner who acts against the cogent reasons given by G. moves upon dangerous ground. The design of law is to secure property, if it does not answer this purpose, more mischief may ensue, than if there was no law, for besides the evils arising from a present erroneous decision, it may be brought as a precedent for future.

But although the arguments in favour of G. were powerful, the danger of the Bench visible, and the precedent mischievous, yet they had reasons to view the matter in another light. It appeared that A. had lost his property, the whole difficulty lay in fixing upon the right person to reimburse him; it also appeared, that G. did not really pay the brother for the coffin, but the brother being in his debt, G. intended it as a set-off, which perhaps was the reason why the brother solicited A. to perform the work, that he might pay the debt rather than himself. That G. had received

ceived the property was clear, but whether he had paid for it even in a set-off, was not, for he was repeatedly urged to produce an account between the brother and himself, or a receipt for the coffin, but in vain. Again, when facts speak, the Bench never meddle with characters, but these being silent, they wanted, in the present dark case, every light they could muster. The character of G. did not stand perfectly fair with the world; for common fame had loudly accused him with well understanding the whole process of a counterfeit halfpenny, they were also induced to suspect collusion between the brothers, that A. might become the scape-goat.—For these reasons the Bench ventured upon a decision against G. contrary to an established maxim, *the employer shall pay the workman,*

LXXXI.

The Stamp.

Things are unfavourably circumstanced when law and equity directly oppose each other, so that one of them must fall. The only question then to be considered is, which must be sacrificed?

We should reasonably suppose, equity ought to stand upon an everlasting basis.

Should the weary and sleepy traveller, retire to the corner of a field for repose, and while he sleeps, the farmer cut off his retreat by surrounding him with a hedge of thorns, the law says the farmer has a right to make his hedge where he pleases, and the other, none to destroy it. Is the traveller then to perish because the law must be kept? But if the law will vindicate the farmer in erecting the fence, equity will the traveller in breaking it down: Upon what unfavourable ground then does the Commissioner stand, who both ought, and wishes to adhere to the laws of his country, but is obliged to break them? He must either relinquish conscience or law. A point like this, even unconnected with the lawyer, would bear an everlasting dispute, because both sides seem right. The weak and absurd minister who brings him into this situation, by introducing an act to infringe the powers of equity, ought to be deprived of his political existence, and his works follow him. It is allowed on all hands, that the expences of government must be supplied; but it must also be allowed, that the consequences of an act should be seen, and its evils avoided. Because a case is *law*, does it follow it is *right*? When this

contrariety appears, it brings with it no alternative, decision must lie in the breast of equity.

A plaintiff possessed a note of hand, not upon stamped paper, given by the defendant for 5l. 6s. and payable by one shilling a week. Thirty weeks being due, he sued for thirty shillings. An attorney pleaded for the defendant with an air of decisive triumph, that a note without a stamp, could not, by act of parliament, be admitted as evidence in any Court. That the note annihilated itself; that the whole debt of 5l. 6s. might stand without it, and that the plaintiff might sue for 1l. 19s. 11d. which must comprehend the whole.

Court. No law ought to set aside an evidence which can elucidate a fact. If a judge shuts his eyes against information, he shuts them against justice. Our oath does not oblige us to proceed according to law, but good conscience. A Commissioner must decide as he is convinced. An act of parliament cannot convert wrong into right. This note, even without a stamp, convinces our consciences of two things, that a certain sum was agreed between the parties as a debt, and that a shilling a week should be the mode of payment. Neither side can break either of these articles without injustice, then what right has law or we?

If

If we are convinced the agreement is founded in equity, how can we reconcile it to ourselves to destroy it? The note proves both, neither doth any contradiction arise against it, except an act which proves nothing but weakness in the minister, and necessity in the state. Should we destroy the debt, and be asked afterwards, whether we thought it just, and the bargain fair? we should answer in the affirmative; should we again be asked why we did not give it the owner? we could find no answer but the blush of a culprit.

The same arguments hold good with regard to receipts, which we may also consider a tax upon justice. Should a man give a receipt without a stamp, and afterwards make a second claim, though we leave pains and penalties to superior Courts, yet, being convinced the debt was paid, the suit would be discharged.

Though it has not been the practice of this Court to divide a debt, except the contract for such division was made in writing, yet why may not a verbal division hold good? If 5l. 6s. is owing by one man to another, and they verbally agree the money shall be paid by instalments, neither of them can justly dissolve the agreement, consequently the stamp is out of the question,
they

they ought to be supported, and the Court to lend their assistance in discharging the debt.

As law cannot bind conscience, and as we remain bound by the oath of rectitude, we must decide for the plaintiff, and express our regret, that an act of the legislature should clash with equity.

LXXXII.

The Stumbling Wife.

The intricate windings of the law are deceitful: The traveller pursues a false road, and sees with false lights, till the *ignus fatuus* conducts him to the end of a melancholy journey; when, from being a sufferer he finds himself a greater; whereas, had his neighbours been invested with summary powers, they might have put a period to the contest, perhaps without a lawyer, but really without a loss to the parties.

The increase of causes in this Court, has increased the attendance of the professors of the law, who, fond of the mazy track they have long pursued, would quickly convert it from a Court of
Equity

Equity to a Court of Law. Scarcely a day passes without the appearance of a lawyer; who hired, like a Swiss, in defence of his employer, boldly encounters his antagonist, but with this difference of wages, the Swiss fights for seven shillings a week, the lawyer for seven shillings a cause. Two consequences attend him as closely as his client, or his fee, the business will be stagnated, and the cause disguised. Whenever we behold the champion enter, we may safely order dinner to wait; and, his manner of opening the case, is to prevent our seeing it.—It is the business of a Commissioner to separate truth from falsehood, to see things as *they are*, and to render justice, tempered with lenity, to all. It is the business of an attorney, if faithful to his trust, to hold up a false mirror, to represent things as they are not, “to make the worse appear the better cause,” to mix the bitter ingredients with disguise, and gild over the pill, that the Commissioner may swallow it.

A plaintiff sued for 11. 19s. 11d. An attorney appearing for the defendant, asked the plaintiff, whether he held the defendant's note of hand? He then produced one of ten guineas, payable by instalments; more than two guineas of which was due, and observed, the money he now sued for,

for, was no part of the note, but a separate debt. The attorney remarked, the note was not valid, no consideration having been given, but was fraudulently obtained; that if the matter was examined, a scene of iniquity would open that would astonish the Bench; that familiarities were supposed to have taken place between the defendant, and the plaintiff's wife, and that the ten guinea note was squeezed out of the defendant as hush-money.

Court. The validity of the note perhaps may be known by investigating the affair. If it should appear collusion had been practised by an artful husband and deceitful wife, to draw in and fleece an innocent person, we should instantly quash the proceedings, and destroy the security. But if it should appear, the defendant formed, and executed his own plan, that he deliberately trampled down the fences of virtue, invaded the premises, and gathered the fruits, solely the property of another, we should consider it as *value received*. No man ought to take property without reparation. If, by this ten guinea note, he stifles a prosecution for crim. con. he is perhaps a gainer by the contract, and favour from us, without justice, is not to be expected, we would distribute both. But as it is an established maxim in this

Court,

Court, never to throw down a stumbling reputation, but to give it every chance of recovering itself, we shall at present, having dropt these hints to the suitors, for their reconciliation, forbear the enquiry.—We would remark to the plaintiff, that an order cuts of every claim from the beginning of the world to the issuing of the summons. If the debt is just, he will, by a decision, lose three pounds, which he seems not aware of. For these reasons, it is his interest to withdraw the action, and, as the note is payable *to order*, endorse it to another; for every holder has a right of suit, in which case, he may, if the affair cannot be compromised, sue for his 11. 19s. 11d. and the note may also be recovered.

The second Part.

Matters between the contending parties not being settled, and they having launched into the troubled ocean of law, without daring a voyage, the plaintiff, a fortnight after, brought again his cause, his note, and his evidence.

The evidence declared, “that he went to the
“ plaintiff’s house, who took him into the cellar:
“ hearing a noise above, the plaintiff desired him
“ to

" to peep through a chink in the door, when he
 " saw the defendant put his arms round the wife's
 " waist, and move with her towards the wall.
 " She called to her husband for help, who rushed
 " in, swore like a coal-heaver, turned the wife
 " out, fastened the door, seized the poker, and
 " bullied the defendant, trembling for his skin
 " and his character, out of the ten guinea note."

The plaintiff contended, with chagrin in his
 face, and fire in his eye, that the defendant had
offered him two guineas, which he refused, that he
 had a just title to the note, that it was fairly ob-
 tained, and that the other had no right to take
 liberties with his wife.

Court. And so you suppose a simple embrace of
 your wife worth ten guineas ! You must suppose
 yourself immensely rich, possessed of such a trea-
 sure ! Why then do you press money out of the
 unwary ? If a man is liable to a ten guinea tax
 for so trifling a liberty, he has reason to dread a
 tax, even for a look, what then must be the price
 of possession ! But perhaps, for the money charged
 here, you had rather she was encircled with the
 arms of another, than your own.—You say the
 note was freely written, you should rather say, it
 was written with the poker. Though the free-
 doms

doms taken by the defendant, may not always be justified by the perfect rules of decorum, yet, we apprehend, they rather merit a reprimand, than a fine.

As far as we have stated the case, you can have no demand; but, perhaps, if we examine three little incidents, which occurred in the trial, you will appear in a diabolical light. Taking your evidence into the cellar, carries with it all the formality of design. Your wife calling for help, was meant to proclaim her innocence, and convey notice to you, why then did you turn her out of door? it could only be to save appearances: these indicate it a pre-concerted plan between you; and, her afterwards remarking to a neighbour, "we have nabbed the defendant," confirms it. How base must be that husband, who can prostitute the mind of his wife! there is but one step more in his power, and that he can easily surmount, to prostitute her person. The wife too, who condescends to league with her husband to deceive one man, will league with another to deceive him.—We were totally unacquainted with the merits of the cause, when last before us, and gave you a chance of saving your credit, but your extreme desire of money, and that not your own, has induced you publicly to expose yourselves in
a degrading

a degrading light, has nipped your profits in the bud, blasted your future views, and brought a stain upon your reputation, which nothing but time can wash out.

LXXXIII.

The Collector.

I have remarked, that every contested cause has two sides, supported by two antagonists, each believing himself right, is entitled to victory ; but as only one can succeed, the other becomes chagrined. If he is an inferior, he will plentifully discharge his abuse at the Commissioner, behind his back, if an equal, perhaps accuse him to his face ; so that whether he determines right or wrong, he cannot escape censure. But as a mind oppressed with loss, can only find relief in words, and as words hurt nothing, except a man chuses to be hurt by them, the Commissioner, who has acted to the best of his powers, may as well let them pass with a smile. The use of the tongue being all that is left to the loser, it would be cruel to deprive him of that last, cheap, and desirable remedy.

A a

A collector

A collector of the King's taxes, not being paid by about six persons, while in office, had, to make up his accounts, paid the money for them, and brought them to the Court for re-payment.

The Commissioners were surprised, as no cause of this nature had ever come before them, and it seemed of consequence. They enquired how far he was authorized to pay for another? He answered, he had paid for some at their own request, with a promise to be reimbursed; but in other cases, unrequested by the debtor; that it was done out of kindness to them, to prevent a distress, and as the money was paid out of his own pocket, it was reasonable he should have it returned.

Court. All public taxes are debts due from private persons to the Crown; how highly then is this little Court honoured, when our aid is requested to assist the *King* in recovering his debts! The same honour awaits you, who stand before us as the representative of majesty!—Instead of this being a Court of Equity, one would think it a Court of Falshood, for unfortunately we can scarcely believe half what is said to the Bench. It is not our business to enquire into *motives*, but *facts*, otherwise it might appear doubtful whether the spring of action was *their* interest, or your own.

own.—Though at a transient view, all your debts may appear of one aspect, yet upon a close inspection, they will be found of two distinct natures. Where the debtor requested you to lay down the money, or promised payment, you have a right to the debt, and we shall award it with pleasure; it was an act of kindness which merits the thanks of the debtor; it was a fair contract between two parties, which we have no right to dissolve. But where you paid, without that request, you paid it in your own wrong, and must sustain the loss. To give you such a debt, would draw after it a numerous catalogue of evils.—It is giving instability to property, taking that power out of those hands, where alone it should rest, and conferring it on him who has no right to receive it. No man can pay my money without my consent. If this was allowed, I am no longer my own master, for if he has a right to pay one debt, he has a right to pay any, or even all, and as very few people can instantly answer every demand, without breaking the line they wish to preserve, he brings me to that ruin which prudence cannot shun, he lays a trap which all my foresight cannot avoid. This liberty, though in the form of a kindness, brings destruction in its rear, and is a liberty one man has no right to take with another. The debtor is the best judge, what debts

are necessary to be discharged first. As he is the responsible man, he ought to be the acting one. What prudent Court then would introduce, and licence, a destructive meddler ? If we leave the door open, what mischiefs may not enter ! and if admitted, where can we stop them ? The master must give way to the intruder, while the secrets of trade, the concerns of the family, and the mysteries of the counting-house are laid open to view. —The law has marked out a road for the collector, by distress, and this road he is obliged to follow, he cannot mark out one for himself.

At this important trial, we were three Commissioners upon the Bench, two of them were at first, from motives of gratitude, inclined to decide for the collector ; but, for the reasons above, we were unanimous for the defendant, consequently the wrath of the collector, and that of his friends, fell upon me. Some, who were disinterested, approved the decision, but which was right, must be left to the world.

LXXXIV.

The hunted Jew.

It is rather strange for a jew to turn christian; stranger still, to turn christian preacher; and yet more strange if we find him a *methodist* preacher. All this happened to Philip Levi Coan, who having renounced the jewish faith, became an object of detestation to the jews. Pelted, hooted, hissed at, by his forsaken brethren, nothing but the restraining laws of England could preserve his life. Every art was put in practice to ruin him. All his past errors, whether real or imaginary, were held up to view, while he considered himself the persecuted apostle of the gentiles. As he possessed all the perseverance, and the poverty of an apostle, they were determined he should, like them, preach to none but prisoners, therefore fabricated a debt of nine shillings and six-pence for shirt pins, sold many years before at Bristol, and brought him to the Court of Requests.

There is a persecuting spirit in man, which may be softened by education, but can never be eradicated. This spirit, like its father Satan, can

change itself into many forms, and operate as many ways, but chiefly against those whose country, or religion, differ from our own. We often find this spirit changed into an angel of light, for the persecutor has always the address, to cover his actions, with, "the cause of the Almighty. "Fighting the battles of the Lord. Doing "God service."——But are our ideas of a divine power just, when we suppose he cannot proceed without our aid? Pride tells us our help is necessary, but reason contradicts it. Perhaps this angel of light appeared when Moses butchered the Egyptian, and covered his crime in the sand, The same active spirit was, for a while, laid, with Pharoah in the Red Sea, but revived again in Joshua, when he destroyed whole nations who had never offended him; for though the character of this hero stands without spot in our day, it did not stand fair in his own, for we read, that the persecuted, who escaped his sword, flying towards the east of the Mediterranean, erected a pillar, which, many ages after, was discovered, with this inscription, "we flee from Joshua, the son of "Noune, the robber."——It appeared in Elisha, when he commanded his sister savages to devour forty-two children, who had only acted like children; when a smile, and a kiss, would have stopt their childish ridicule, and established peace for
ever

ever. Perhaps he was a bachelor, and a stranger to parental affection.—It has haunted the Jewish church to the present day, and it appeared in the suitors before us.

The greatest man we read of, who cast out many evil spirits, did not cast out this. His design was not to alter human nature, but improve it. He did not chuse to do the work himself, but commanded others; for this purpose he has left the most perfect directions and examples that exist; not how a man shall reduce his neighbour's spirit; but his own; how well they have been attended, to may be seen by the progress of persecution in the christian church. I am not selecting the Jews as the only people with whom this evil spirit abode, for it has been as familiar with the christians, and has taught us to dye our characters in blood.

A man's conduct can divide itself only into two parts, that towards his Maker, and his neighbour. All matters of faith and modes of religious conduct fall under the first head. These matters lie between heaven and the man; another has no right to interfere, neither has *he* a right to obtrude them. What if he should believe that even Satan himself, out of his own materials, forged the

fiery chariot for Elijah, and became one of the horses that flew away with him, wherein am I hurt by his belief? and if I am no way injured, with what pretence can I punish him? Certainly I am doing him a diskindness who never did me one. As his faith does not affect me, I have no powers of controul. If we have a right to punish a man because he is an infidel, we have a right to punish him if he is any thing else, for we shall always take the liberty to judge.—Neither can it be a disgrace to a man to change his religion, it is rather in his favour, for it shews, at least, that he has thought for himself. He has the same right to decline a profession, as his ancestor to embrace it. On the other hand, no man is to be injured by the conduct of another, otherwise the laws of his country must interfere. True liberty consists in thinking and acting as he pleases, but hurting none. While he does this, he ought to be out of the reach of law, and of man.

May 26, 1786, a singular figure appeared before the Bench, under the name of Philip Levi Coan, dressed in black, rather dirty, about twenty-eight, remarkably thin, five feet six, with a fallow aspect, a piercing eye, and a large Hebrew bible under his coat. By his appearance, we thought him unable to speak, but soon found we were
unable

unable to silence him. Samson might have more strength, but he had not better lungs. The plaintiff himself was one of the most voluble speakers that ever appeared in this Court, perhaps he was chosen out of the tribes for this trial, but he had no more chance with the preacher, than the Philistines had with Samson, though equally armed with jaw-bones. He accused the Israelites of great enormities, in as severe terms as the apostles had done before him, and attempted to preach Christ crucified to the Bench.

It is in vain to silence a man who is full of wrath, and of words; after he has disburdened himself a little of both, then is the time to step in. When the Commissioners observed an opening, they remarked,

You are yet but "almost a christian," for you have one of its precepts to learn, that of *meekness*. You are nearly as great a stranger to this virtue, as your brother teachers in the christian church; neither would it disgrace a jew, if your antagonist, the plaintiff, infused a little into *his* conduct.—Whether a Jew turns Christian, or a Christian turns Pagan, is of no consequence to us, we wish to treat you both with justice, as men, and as brethren.

brethren. But wherever we meet with a persecuting spirit, whether it appears as an angel of light, or an imp of darkness, we shall employ our little interest to oppose it. Though we leave the arts of preaching to you, we shall beg leave to make an application to this important subject. It will consist of two short lessons, one of them is learnt by some, but neither will by you: Live friendly in future; and allow another that liberty you wish to take yourselves.

Though your language is nearly unintelligible, from the broken English united with the broken Hebrew, and the violence with which both are delivered, yet we can discover, the debt has no foundation but revenge; we shall therefore dismiss the cause *after full bearing*, to prevent that persecuting spirit, which cannot prevent itself.

The preacher afterwards declared to his friends, that "he verily believed the Bench were under the peculiar influence of heaven," which some people, by the way, rather doubt.

LXXXV.

A Picture of Man from the Life.

Title and possession, like parent and infant, should ever be united ; but if they are separated by rascality, or misfortune, every court, particularly that of equity, should promote a re-union.

If a *man* loses his purse, containing his whole fortune, he probably will follow it with a few execrations ; if a *woman*, with tears. The oaths may recoil upon the giver, the tears may soften the heart, but the Court alone can recover the property.

A man may resolve to methodize his concerns so that the business of an unprofitable office shall not perpetually clash with his own ; but pity may disarm his resolution. — A woman accosted me with tears, the most powerful emollients in nature, and observed with extreme sorrow, that she had lost her needle-book, containing five shillings and sixpence, all she had in the world, in consequence of which her children were starving for bread, that
the

the man who had found it, refused to return it, but cursed her, and claimed it for his own; she wished to know whether the Court could relieve her, for if it could not, an abortive suit would add to her loss.—I remarked in reply, that I had not foresight enough to resolve her question, and if I had, prudence forbid it; that as I should probably be upon the Bench, I could not give advice without being myself culpable; that the event of a cause was uncertain, but if she brought it to the Court, the Commissioners would do her all the justice in their power; and, were the case my own, I would not tamely submit to the loss.

At the trial, the defendant boldly supported his claim to the property. He had fairly found it, and every thing a man finds is his own.

Court. And so you apprehend the street gives a title to whatever lies upon it? You forget that property cannot change its owner, without an act of that owner. You can inherit no title but from her, and she has given you none. If you accidentally find a person's title deeds, will it give you a right to the estate? Should a man take up your watch, would you think he had a right to keep it? Or rather, would not you hold forth
in

in a different stile, and proclaim that power right which obliged him to restore it. It may be generous to reward the finder, but he can demand nothing; neither has the person who wishes to conceal, or refuses to return, what he finds, a right to expect a gratuity; we are sorry that half this is your case.—A gentleman, some years back, was travelling in Nottinghamshire, with a servant, who carried a portmanteau, in which was 2000*l.* to pay for an estate. By some accident it slipped unperceived off the horse. When the loss was discovered, the servant posted back. An old woman, with the portmanteau on her head, whom they had lately passed, exclaimed, “I know what you are galloping after, here is the treasure you lost, take it and welcome.” She was afterwards introduced to the master, who gave her five guineas. Both parties were pleased, and whenever his affairs led him to Nottingham, he sent for the old woman, and always gave her a kiss and a guinea; each had a different relish, but both were very acceptable.

An old woman is, unjustly, deemed a despicable character, but how amiable would your's appear, could it be placed in the same light. Had you been the fortunate finder, you would have instantly

stantly quitted the road, deposited the prize in a ditch, and covered it, as the robin red-breast did the babes of the wood, with leaves, till the darknefs of the night should favour the thief to carry off the property of another.

We shall allow you what you do not deserve—one shilling; make an order against you for the rest, and leave you to reflect, how you *stand* with the world, and how you *might* have stood. Had you sought out the loser, freely returned the property without a fee, for she wanted, and you did not, you would have stood upon honourable ground. You may farther reflect, that your *benefit* will never be called in question, for of this you have publicly made shipwreck; your capacity may; for as every loser of a cause pays the fees, you have for twelve paltry pence, bartered away seventeen and a character.

LXXXIV.

The Pattern Card.

There is an unavoidable confidence placed by one man in another. Two people can scarcely trade together without it. When this confidence is preserved, it is productive of great benefit; when broken, of some evils.

If we take a view of Birmingham at an early date, or rather, before date began, perhaps she consisted chiefly of one street, and that not large, reaching from the south of the High-street to the north of Digbeth, but increasing in industry and invention, the number was augmented to fifteen. Her noisy manufactures were carried on in the front shops, by an inhabitant, whose face and the cinder he made, wore the same complexion. He was seldom found out of the warmth of his furnace, consequently, never travelled for orders. The productions of the anvil, as the axe, the hammer, &c. too ponderous for a card, were scattered over the flap of his window-shutter, which projected horizontally from a mud-walled cottage, consisting

ing of one story above ground, but none below, and rested on a post, to catch the eye of the observer ; this was all the pattern-card he knew.—The traveller, who wished to purchase the produce of the place, approached it through roads so narrow as to admit but one passenger, and so deep, that the passenger appeared a wedge between two hills.—This picture of Birmingham, with some small improving variations, continued through the ages of the uncultured Britons, the warlike Romans, the more civilized Saxons, the thievish Danes, and the conquering Normans, to the completion of the sixteenth century.

Rising in numbers, expansion, elegance, industry, and genius, she, at length, introduced the finer arts, less laborious, but more inventive. The manufacturer ventured to quit the shelter of his own roof, and carry his goods to the neighbouring fairs, particularly that of Bristol.

Brisk orders thinning his stock, rendered him sometimes unprepared for the fairs ; the carriage also of his goods being a certain, and a heavy expence, the sale precarious, and the lesser articles, which were more portable, coming into repute, gave another, a more important turn to trade, and now we behold the pattern-card issuing, from a

two-

two-storied tenement, like the dove from the ark, pass over the face of the waters, but instead of returning with an olive branch, return with a profitable order.

The life of business is the card; its consequences and its benefits are inconceivably great; it is the spring which keeps the wheels of commerce in motion; the influx of wealth; the cause of that amazing increase, which is without parallel; the loadstone which has drawn, and still draws, the adjacent people; the channel which conveys invention; the stamp which gives additional value to landed property; the foundation upon which we see "streets on streets arise!" the rich pasture from whence our luxuries spring; the hand which harnesses the gilt chariot, and the spade which nimbly rolls it over the smooth turnpike. — A pattern-card is a pleasing picture, an emblem of the art, a composition of beauty, taste, and exertion, which, like an apostle, becomes all things to all men; it is liquor for the laborious, and a prominence of belly to the supine; to one person it gives airs of pride, in another, it points the charms of beauty; it supplies one with what he wants, and causes another not to *know* what he wants; it satisfies the wishes of one, and in another it creates wishes which cannot be satisfied; to

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another

another it opens scenes of pleasure, and enables even a Commissioner, from former success, to allow one third of his time to distribute justice to the crowd.—If one might be allowed to prophesy a little, the card will in future, cultivate the use of letters, add information to the mind, and furnish the place with superb structures.

The value of a card is perhaps from one shilling to ten guineas, and is charged to the merchant or not, according to the worth or use of the goods; this is directed by custom. When articles are of small value and single, so that they cannot be brought into use, such as links, chapes, trinkets, screws, buttons, &c. they are seldom charged; but when valuable, as jewellery, watch-chains, &c. they are.

A buckle-plater sued O. and M. for a guinea, the value of a card. He had delivered one fifteen months before, and as he had received no orders, observed, he ought to have it returned; that the property was his, and if they chose to keep it they ought to pay for it.

The merchant seemed hurt to be brought to the Court, when he had neither committed an error, nor contracted a debt, and replied, it would
be

be unfair to oblige him to buy what he could not sell. The card was of no use to any one, for being single buckles, they could neither be sold, nor worn; that when in pairs, it was customary to charge them, which was always done in the first instance, but never in odd articles, nor could the plater make an after bargain of himself, his own consent was requisite.

The merchant perceiving the cause incline in his favour, remarked to the plaintiff in his usual sarcastic stile, or, with what was anciently dignified with the name of *bum*, “you may have the
“card again if you chuse to fetch it. I can tell
“you where it is, I sent it, with a chest full of
“others, into South America; you only need
“step over the Atlantic, you will find it about
“the straights of Magellen, towards the south-
“pole; or, if it happens not to be there, slip
“into the Pacific, you are sure to succeed at the
“foot of the Andes, in the vicinity of Quito; or
“the neighbourhood of Lima.”

This descriptive journey did not at all soften the features of the plater, for whether a man is beaten down by the tongue, or the fist, it is equally difficult to recover himself.

Court. As the pattern-card is of the utmost consequence to the manufactures, we would give it every support which can be given with justice. If the merchant becomes a loser by it, he will be apt to refrain taking it, which would give a wound to trade that no art could cure. It is the card that has marked us a commercial people as far as the winds have swelled the sail. It proclaims industry, genius, and reward to the maker; it indicates profit to the merchant. Whatever fate attends a card, like this before us, it is still the property of the operator; he possesses a kind of freehold right. He places it, in confidence, with the merchant for their common benefit, and like the dove, it is sent out upon a profitable errand, but if like that, it returns no more, the maker, like Noah, must sustain the loss. Should the merchant, instead of sending out the card for orders, deposit it with another maker to pass the patterns, that he might be supplied cheaper, or should he refuse to restore it when it returns, the maker has a right to payment; but neither of these cases have occurred in our time. As in the present instance, the merchant did not purchase the card, as he cannot be answerable for its success, and as he has not been blameable, we may with justice decide in his favour.

LXXXVII.

History of the Court : or, The crowded List.

Solomon says, "There is a time for all things," it follows, there must be a time to learn the duty of a Commissioner; but a very short time will suffice; only two words are necessary to complete him, and these I have mentioned before, *common sense*. Every Commissioner possesses it, he only need learn to apply it. This would carry him through any court, from the Court of Requests to that of the Lords. Should he, through timidity *doubt* his talents, those talents are the more likely to fail him, and induce him to depend on the powers of another at the expence of his own; but let him remember, his judgment like a gardener's spade, will brighten with use. When the infant can walk alone, he quits the arms of mamma, and if in future, while travelling over rugged ground, assistance is requisite, like two friends walking arm in arm, even then he supports his own weight.

Though I was an inhabitant of Birmingham at the institution of this Court in 1752, I was not

of sufficient consequence to assist. The scheme was new, the Commissioners were strangers to business, and there were perhaps 72 learners without a teacher. The clerk pronounced through the mouth of the Bench, like the raree shewman through that of his puppet, as appears in case the seventy-second. Causes were decided as in other Courts, sometimes right, and sometimes wrong, for a few years. But whether the Commissioners disagreed among themselves, or whether from some ridiculous decisions, they got themselves laughed at, or from what other cause did not appear, but the Court lay dormant for two or three years.

In 1772, I was chosen a member, but being a junior, I was rather an observer than a speaker.— I found about fifty causes a week passed the Bench. The Commissioners, who attended business without studying it, sometimes forgot to treat the suitors as brethren whom they were bound to assist, but brow-beat them, as little men, in little office, are apt. *Corden*, the crier of the Court, laid down the law to the Bench. *Barton*, the beadle, whether drunk or sober, was unwilling a cause should pass without his approbation, and the humble Commissioners suffered themselves to be treated with the tankard by their beadle.

Our

Our poor fifty causes lingered from ten in the morning till three in the afternoon. This was rather irksome to people who had always been used to the old fashioned practice of casting an eye upon dinner at one. The roast meat was dried to a crust, the family disconcerted, and the dear wives of our bosom, knew well how to convey a chide in a glance.

Violence seldom succeeds in any scheme, particularly in reformation; the fruit produced by time is preferable to that forced by the hot-bed. "Learn to do a thing well, and then learn expedition," is an excellent maxim, which has been handed down from tutor to pupil, for many ages; it was inculcated upon me fifty years ago; assiduity will accomplish it,

The business of the Court gradually increased except when Barton could not find time to pay the plaintiffs their money, till now, in 1787, the Commissioners sit from ten till one, in which time they determine about seventy new causes, and one hundred *ex parte*, or such as must undergo a second hearing, and again from three till five in the afternoon, when they dispatch about one hundred and ten more. The lists are so crowded, that the Commissioners discard medium paper;

and call out for royal; and at the office, the lists are filled with suitors for two or three weeks to come; hence arises a new species of trial, unknown in the infant state of the Court, but which common sense can easily surmount.

Kendall sued for one pound. The defendant remarked, that he had given him a note for three pounds, payable at a shilling a week; that Kendall had before sued him for 11. 19s. 11d. when there were forty-five due, and that as a decision comprehended the whole sum in demand, there could only remain fifteen. To this, the other replied, when he took out the summons, he was given to understand the cause, through multiplicity of business, could not be brought on till Friday fortnight.

Court. Whatever errors arise from a man's neglect, *he* must be responsible for, the act was his own, and the effect must follow; but when events are out of his power, they ought not to affect him either with profit or loss. There is no more reason why a crowded list should hurt the plaintiff, than benefit the defendant. As all summonses are dated the Court-day before they issue, and as he applied two weeks before the trial, he is entitled to three of the lost weeks; and as the loss
of

of the other two originated from himself, he alone must sustain it. We shall therefore make an order for eighteen.

LXXXVIII.

King's Norton : or, the Fall of Grandeur.

If this little work should meet the hand of a stranger, it will be necessary to inform him, that King's Norton is an extensive manor, vested in the Crown, and contiguous to that of Birmingham.

The very name of a court of justice, carries terror ; even the innocent suitors approach it “ with fear and trembling.” This terror arises from various causes, such as the apprehension of losing, which might hurt the pocket a little, and the pride much ; the dread of making a weak side before superiors ; being caught in an unguarded expression, held up to the public eye, &c. But alas, how little do we know each other ! The suitors are not the only people that tremble, for they often influence the Bench ; the Commissioners themselves experience many a melancholy thought
and

and aching heart, at the deplorable situation of those before them; and can scarcely refrain the disgrace of tears, if tears are a disgrace. They feel for distress; more than it feels for itself.

There is nothing more common, in the decline of prosperity, than, that the *idea* of a gentleman, is all that is left of the gentleman; this is the last spark in the dying embers of greatness. There is nothing more detrimental than this idea, for it prevents a man from entering with spirit into that drudgery necessary for existence. He feeds upon a departed shadow, when alas! a shadow is sometimes all he has to feed upon. He tells the world, his poverty arises from *misfortune*, but the world generally changes the word for *imprudence*. But whatever is the cause, he demands our pity. We envy the man in an exalted state, but if he falls, we cannot refuse him assistance. We feel, even for those two imperious characters, those unsufferable priests, Becket and Woolsey.

Among 170 defendants, called before the Court, July 21, 1786, was that of Henshaw Grevis, Esq. Struck with a name with which I was well acquainted, I asked if the person appeared? When a meagre figure, near sixty, came forward, and behaved with all the humility of manners that
fancy

fancy could paint; the silent tear seemed to rise in his own eye, and demanded mine. Though his whole apparel could not be worth eighteen-pence, I well remembered to have seen him, thirty years before, completely mounted, and dressed in green velvet, with a hunter's cap and girdle, at the head of his pack. Like *Actæon*, he had formerly hunted with his own hounds, perhaps, like him, had been devoured by them. At other times, the arms he carried, were a gun, and ornamented pouch, his companions, were his dogs, and the regions he commanded, the earth, and the air. But now his gun was metamorphosed into a spade, his companions were common labourers upon the turnpike road, and the principal scene of action, was a gravel pit.

I could not forbear drawing a silent comparison between this devoted out-cast of fortune and myself: he could prove a long line of wealthy and honourable ancestors, but mine had never been off the dunghill for 200 years: his, had been fixed upon one rich domain for many centuries; mine had been desolate wanderers, and had tried many parts of the kingdom, but found every spot barren. He, in the morning of his days, decorated as above, with the trappings of affluence; I, in humble poverty, and a dirty apron,

should

should have been disdained even a look. But now, in the evening of life, he, depressed with age, want, and the keen reflections of departed plenty; I, hurt at pronouncing as a judge, upon his distress.

His family had produced many amiable characters. They figure in history, as commanders in the civil wars under Charles the First; and, however contrary the sentiment, as succouring the ejected ministers, who, in 1662, were discharged from the establishment, by the violence of the times. I asked him, how long his ancestors were residents at Moseley-hall? He answered, nearly from the conquest.

One disorderly member, may make dreadful havock in the patrimony of an house, but when every individual unites in its destruction, they quickly put a period to its existence. An instance is rarely known, that he who pulls the family fortune to pieces, repairs it; the same temper which begins bad, ends worse. Should the estate be too ample for one generation to destroy, an heir of a different cast may arise, as in the Clifton family, to give a turn to the fortune, and preserve the name. But the ancient inheritance of this unfortunate house, having been dreadfully curtailed,

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curtailed; a landed property of about 9000*l.* was sold in 1764, to John Taylor, Esq. and the scattered remains, worth 5000*l.* more, to various persons, by public auction, which totally sunk the family into that infinite mass of mankind, which are indistinguishable.

One would think King's-Norton fatal to greatness, for tradition tells us, in the last age, the parish could boast the residence of five 'squires, who rolled in five carriages, but now, the inhabitants themselves tell us, they are a parish of paupers.

The debt charged upon this unhappy son of adverse fortune, was seventeen shillings. It appeared to be a security given to the plaintiff, to cover a misdemeanour of the son, which the Court, out of tenderness, did not chuse to enquire into.

As fate, therefore, seemed particularly to mark him for destruction, beyond any of his race, for his ancestors, being strangers to poverty, could not dread its effects, and his successors, inured to penury, will not regret the loss of that affluence they never knew, and as he alone, the sport of adversity, was tantalized with the pleasing views of prosperity, and then plunged into the depths of distress, the Court, out of compassion to fallen greatness,

greatness, charged the payments at the low rate of two shillings a month, postponed the first for three months, and recommended lenity to the plaintiff, who rather exulted in his calamity, and whose heart, seared by poverty, had lost every tender feeling.

LXXXIX.

The Necessity of Marrying.

No man can justify drawing to himself the property of another. No Court ought to allow it. Should a man get possession of the heart of a woman, it does not give him a title to her money; nay, should they grant each other all the privileges the two sexes can grant, it no way unites their property; their effects, like their persons, are two, and marriage alone can make them one.

In some cases, I have mentioned the real names of the parties, but in others, where it might have been imprudent, or where they were forgotten, I have adopted that antiquated subterfuge practised by the libelist and the lawyer, of calling in the letters of the alphabet to personify the characters.

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Let us suppose then A. to represent a servant girl of twenty-seven, B. a book-keeper, about the same age, C. an apprentice boy of eighteen, learning the art of gun-making, all inmates in the same family.

A. having found it too difficult to live twenty-seven years without a man, had admitted to her embraces B. and C. but whether she had admitted the whole alphabet, did not appear.—A pregnancy was the result, consequently a husband must be found; but whether she had admitted the whole alphabet, or only apart, was not material, for it could no more be ascertained which was the father, than which was the effective bullet that kills, when a platoon fires at a deserter.

She might be said, however, to be mistress of the A. B. C. for they being in her power, she could lead, or drive them at pleasure. She expanded the marriage lure for B. but he was too shy to be caught.—In a gay humour B. displayed two guineas in his open hand; A. in the same humour snatched them out; “she should soon have occasion for them,” with a smile. *He* regreted, wished, hinted, asked. She smiled again, acquiesced, and even promised, but still kept the money.

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As no time could be lost, she married C. and refused to pay the two guineas, alleging, it was a present.

All debts contracted by a woman before marriage, must be sued for in the name of both; B. brought this to the Court in the name of C. and A. his wife. C. pleaded his non-age.

The Court allowed the debt might be just, but they could not give it B. for though the woman was of age when the debt was contracted, and liable to the sentence of the Court; yet, becoming a wife, she is protected by her husband, she cannot be separated from him. Neither can their sentence reach the husband, because of his minority. Had it been contracted by himself, it would have been lost for ever, but being contracted in the adult state of the wife, a responsibility will revive in him when he becomes an adult himself.

XC.

The Necessity of Unmarrying.

It is happy, in the œconomy of man, that one power can controul another throughout the whole system

system of government. If a suitor thinks himself injured in one court, he can fly to another; this will excite a court, for its own credit, to endeavour after justice, that the suitor may have no *occasion* to fly. A judge is apt to feel himself awkward, when his sentence is reversed by the chancellor, and the chancellor may feel himself hurt when his decree is reversed by the lords; nay, even the lords decide with caution, for the eye of the world is upon them. If the defaulter appears before that little tribunal, the Court of Conscience, the commissioners themselves must appear before the greatest tribunal we know, *the public*.

Though I have given many examples of the conduct of the Bench, I can only hold myself responsible for those I approved. If I am outvoted, the cause is not mine, though I describe it; I am no more accountable than a woman, whose virtue is forced. Of this description is *the oppressed suitor*, who was deprived of his right; *the merchant and the button-maker*, where the former was charged a guinea, though it was easy to see he was before a loser. Had the decision been with me, I would have awarded a trifle to end the contest; also, in case the forty-fourth, *the power of beauty*, I would have obliged the

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landlady

landlady to refund the money she took, had her charms been twice as many. If a man receives favours, they are for himself, and ought to be paid for out of his own property ; but if he robs the temple of equity, it becomes the greatest evil of the two. I was highly pleased with the reply of a lord chancellor to one of his mistresses, who strongly interested herself in favour of a clergyman, to fill a vacant benefice. “ At all events, “ Madam, I shall provide for you, but I hold it “ a duty, to confer emoluments upon merit, and “ of that I shall be judge, therefore let me have “ no more of your solicitations.”

I am, however, of opinion, there are cases where the barriers of justice may be broken through. A debt may be acknowledged on both sides, and yet the Bench may be justified in depriving the owner. I have given an example in case the eleventh.

There is no subject which has been treated more at large than matrimony. Our moralists dress it in a desirable light ; our novelists, in the charms of fancy. No subject has been read with so much pleasure ; the imagination can paint, what the moralist and the novelist have omitted. But is the marriage state happier, or the world a
shilling

filling better for all they have written? Or rather, is not the disappointment greater, according as the expectation is raised? No lesson on one side, nor resolve on the other, ever lasted a month; the two tempers, like two ponds of water, will each find its own level. There are three requisites to form conjugal happiness, prudence, good-nature, and love. Prudence and good-nature are very different things, and not under command, but whenever they appear, love is as sure to follow, as the chaise the horses. When this trio meet, happiness will grow with time, and, like the oak, flourish in old age. No decays of beauty, or of health; no mutilations of body, or wrinkles of the face, can diminish it.—But if we look into the world, we shall find the matches of this amiable description almost as thinly scattered as the righteous men in Sodom.

If we examine the temper of man, we shall easily find a reason for this scarcity. He is formed for variety. Every thing may *please*; but nothing long. He could no more be contented with one sort of enjoyment, than one sort of food. Possession tires. The only way to satisfy the child, whether of three, or threescore, is to change his rattles. A man may discover wonderful charms at a distance, in a fortune, an estate, a house, a

wife, a park, a trip to Bath, &c. but pleasure, like a fish, coveted by the angler, and caught with difficulty, dies in possession. It follows, if every prize a man can obtain, palls in one year, how can matrimony please for twenty? Being already tired with his journey, the traveller becomes peevish, when he considers it has no end. He may wish to change, but the law forbids him, and this increases his wishes. He finds it the only change forbidden. He views himself in an irksome state, filled with as many degrees of unhappiness as his idea can compass, and he cannot be unhappy without making another so.—Here, then, we are passing from the *good*, the most perfect state we know, to the *indifferent*, which may be borne with ease; from thence to *worse*, which is borne with great difficulty, to still *worse*, which is borne with greater; but what remedy is there for the *worst of all*! If every evil has a cure, why not an unhappy marriage? No other chain can be rivetted so fast, as not to be loosened. Some few find relief in the house of lords, but this is attended with a tax, like that upon Dutch paper, which amounts to a prohibition.

As our marriage-makers are fond of being well paid, if they could erect a *court for the dissolution of marriage*, it would almost pay them to their

their wish. If their price was easy, their custom would be immense ! No court would be more useful, not even that I describe. It would now and then save half a pair from being knocked on the head, and the other half from being hanged. It would be serviceable even where matters are not carried to extremes, by preserving order in the family. The husband durst not act imprudently, lest the wife should apply ; it would also silence *her* tongue, which nothing yet could silence, for fear of offending the husband. If this *court of dissolution* could not introduce love, it could peace. Their fear of the court might enforce that decent behaviour, which in time would grow into a habit.

Should it be objected, that this doctrine is contrary to scripture, which says, " Those whom " God has joined together, let no man put asunder," it may be asked, If the Almighty makes every match, whether he has not made some of them very ill ? and whether those of the Fleet and Gretna-Green are chargeable to his account ? If it should be said, he only makes a part, how can we distinguish ? Probably it is that part which would have no occasion for the *court of dissolution*. Should it again be objected, that to dissolve the marriage-knot is dangerous ; it may

be farther asked, what evil can arise from untying a knot, which the proprietors are resolved to cut asunder?

Two young men, decent in appearance, came before the Bench. One demanded thirty-nine shillings and eleven-pence. When this is the claim, we reasonably suppose the debt more. The other acknowledged it right, but thought it cruel to pay, for the plaintiff had taken from him his wife.

Court. Did you take her?

Plaintiff. Yes.

C. Do you keep her now?

P. Yes, I bought her.

C. We did not know Birmingham was a market for wives. We considered its market designed for a wife's support, not her sale. By the external accomplishments of both, she has made an inferior choice.—Upon what do you found the debt?

P. He owes me four pounds, which was money I advanced to his wife, when they cohabited together.

C. You

C. You seem to have had a prior connexion with her, or why did you supply her with money? Perhaps that money was to draw her affections, and prepare her for your own purpose, consequently it operated to the husband's destruction. Should you think it right, to be obliged to pay for the pistol with which a rascal robbed you? She is as much his wife now, as before; and you might with as much propriety sue for her board.

Clerk of the Court. If he takes the woman, he ought to take her debts.

P. He owes me the money, and if you will not allow it, the cause shall be dismissed out of this Court, that I may recover it in another.

G. If you will restore the wife in the same state you found her, we will order you the debt.

The husband seemed to feel his own distress; his eye reddened, the indication of a rising tear. What dreadful devastations are made by misconduct, in the married state, when unguarded by prudence!

You cannot repair the mischief already done, yet wish to do more. In what light shall we

view that temper, which would do a man a second injury, merely because he had done him a first? You have ruined the wife, and now thirst after the husband. You have extracted the small remains of prudence, love, and peace, the sweetest ingredients in the matrimonial cup, and infused poison in their stead, which has converted it into a bitter draught.—Our powers are too feeble to restore a roving wife; nor, without repentance, is she worth it; her prudence never existed, her affections are extinct, so is her pity, or you durst not have prosecuted this suite; but our powers are able to cut off your revenge, and restore a small degree of peace to an afflicted husband, by charging him with a debt of *one shilling*.

The plaintiff seemed greatly disappointed, and the husband pleased, to find some relief in a friendly court,

XCL

The Partnership.

It has been a work of study, with some authors, to adapt the names of their heroes to the characters they sustain. But I should, in the following case, have exhibited the real names of the parties,

parties, had they not unfortunately been forgotten. I cannot represent them by A. and B. because I have recently practised it. Damon and Strephon, too soft for my purpose, are more proper for a love tale, to which our present case has no pretensions; neither can I use those of plaintiff and defendant, because they are both plaintiffs and both defendants. As I shall stand excused by long prescription, in uniting the name with the character, I shall introduce a pair of suitors by the appellations of *Scrub* and *Scoundrel*, which, though of the rougher cast, will be found adequate to their merit.

When two people sue each other at the same time, we are as sure of a violent quarrel, as of a storm in winter; nor can the arts of entreaty and command, appease the people sooner than the storm.

By some hints dropt in the contest between these furious combatants, who each demanded as much as the Court could allow, it appeared they were journeymen in the same shop, that they had entered into partnership to practise the art and mystery of plundering, or, to soften the word, of gambling; that having stript others, like their brother thieves, they had quarrelled about the booty,

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which brought to light the secrets of trade. They were masters of the cards, the hat, the dice, and could trace the pedigree of half the game cocks in the neighbourhood.

They procured two men to run a race, were to pay for their time, give them a treat, and stipulated beforehand which should be the winner ; by this means, they were to extract money from the simple. The scheme answered, for they collected five or six guineas from the dupes of the turf, the division of which caused the present contest.

The Court remarked, the money they had fraudulently won, was not their's, but the property of those with whom they betted, that it ought to be returned, and particularly enquired, whether any of the losers were in Court ? but none appearing, they ended the dispute by awarding eight shillings in favour of Scrub, and observed, if any of the losers should make a future claim upon the partnership, they might depend upon the assistance of the Bench.

XCII.

All in the wrong.

Every judgment of a Court is founded on information; they cannot proceed without it. It rests with the suitors to inform. If they give a fair state of the case, and the Commissioners make an erroneous decision, the fault is theirs. But if the Bench, through misinformation, decide wrongfully, the fault is the suitor's. If a cause is lost, owing to the plaintiff being too diffident to prosecute, or the defendant, from conscious innocence, too proud to vindicate, no blame lies against the Court.

As we learn from case the fifty-third, when errors are committed, nobody will own them, I shall state the following as it exactly appeared to the Court, with their erroneous decision, and as it *afterwards* appeared, without one reflection of my own.

A plaintiff charged Mrs. C. seventeen shillings and six-pence for horse-hire; the Court remarked, the case must be disputable, for if the demand was just, Mrs. C. was both able and willing to discharge

charge it. As there was no defence, an order was entered subject to an *ex parte* hearing.

During the interval, she, as an acquaintance, applied to me, and assured me, "she had nothing "to do with the matter"—You must Madam, either by yourself or agent, support the cause in Court, or it will most assuredly go against you.—Whatever you say to me as a private man, avails nothing, I ought not even to remember it ; when the parties are face to face is the time for information.—"She would sooner pay the money than "appear in Court, and asked if her servant girl "would be sufficient, for she understood the affair, "as well as herself." Whoever you send, Madam, must be able to explain the case.

At the *ex parte* hearing, September 29, 1786, the plaintiff proved, that a man hired a horse of him in Mrs. C.'s name, that he sent the horse to her house, who herself ordered him into her premises, till the rider was ready ; that he did not know the man, but made the charge to her account ; that when brought back, the money was offered, which the plaintiff refused, because damage was done to one of the stirrups, for which he insisted upon satisfaction ; but hearing no more of the man, he sued her. The girl, instead of overturning

overturning this relation, by setting the matter in another light, seemed to think her duty consisted in scolding the plaintiff, and being repeatedly asked, who the man was? as often replied, "Let him find it out."

As all the information inclined towards the plaintiff, the Court would have been justified in deciding for him, but they still entertaining doubts, proposed to dismiss the cause, and recommended that Mrs. C. should pay half a guinea; but neither side consenting, an order, was made for that sum, to the chagrin of both.

Next day the Court was depreciated, and I charged with partiality in bitter terms, by Mrs. C. "She had before informed me she had nothing to do with the horse, and yet a decision had wrongfully gone against her; she would never pay, but suffer an execution, and move it into another Court."——And must the Bench be influenced, Madam, because one of its members received a private intimation of innocence from one of the parties? must I set aside my own judgment, and break through all the barriers of equity to gain your point, because you pronounce it right? How then must I act, should the other party tell me *he* is right? I cannot travel two opposite roads

roads at the same time. When people contradict each other, the only way is to come to proof, this was done yesterday for half an hour, and all the proofs were against you. If a Commissioner takes one side, he is no longer a judge, but a party, he should only hear the evidence of both, and determine as he is convinced. In what a degrading light will he appear, if he condescends to vindicate a man's cause, who will not vindicate it himself.

The true state of the case, as I was afterwards informed, was as follows:—W. having married the daughter of Mrs. C. had entered into partnership with H. and after limping on as merchants, five or six years, fell. During their misfortunes, having occasion to send their servant to Chapel-house, to meet a gentleman from Portsmouth, they ordered him to hire a horse, which was sent to Mrs. C.'s, all the parties being there. At his return, the master gave him money to pay the plaintiff; but the dispute about the stirrup prevented it.—The servant away with the money.

Could Mrs. C. have condescended to open this information to the Bench, the cause would have been dismissed, for though the plaintiff ought to be paid, she was not the person to pay him. As
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the servant did not use the master's name, the plaintiff might sue *him*. As the horse was for their use, he might, had he known it, have sued them; their giving him money to pay is of no moment, as he was their servant, it rested with them to see it paid, or the loss is theirs; I am responsible for the man I employ, not another.—What rule then in equity could prevent the plaintiff recovering the remaining seven shillings from W. and H. or, from the servant, if he returned; or, Mrs. C. from suing them for the ten shillings and six-pence paid on their account? or, from the servant, for it was paid on his? Or, prevent W. and H. from recovering back their seventeen and six-pence?

XCIII.

A Trip to Lichfield Races.

It appears from the preface, that the business of the Court is a principal amusement of my life; but it does not follow it should employ every moment. If, my dear reader, burgundy was your favourite liquor, yet you would not wish continually to be drenched with burgundy; abstaining
intervals

intervals are requisite for both. It appears from case the eighth, that I resolve against Court business, except upon the Bench. Friday contains a large portion of time, which is chearfully consecrated, and offered up to Equity, but even this is more than I can well sustain, for I sensibly feel an expence of spirits by continual exertions in a tumultuous crowd; the animal powers, as if overcharged with burgundy, give way to the load; I wish, at least, the remaining interval of time for myself. But notwithstanding all my resolution, I am dragged into business in spite of resistance.— There are cases of pity, as the eighty-fifth, which it would be cruel to refuse; there are ties of friendship where a man can deny nothing; and there are even strangers of genteel appearance, whom it would be the extreme of ill manners to treat with inattention. But whatever applications are made, this remark holds good in all, they endeavour to argue me into their sentiments; nor can I expect quarter till they have tackled my judgment to theirs; this obliges me to give up the argument. I never tell any person, he will win, because I am ignorant myself; if I did, I could do no less than favour his cause, to save my credit. Though he sets his case in a fair light, yet there is another side to appear, which may be set in a fairer. To decide, would be assuming a prerogative to
which

which I have no pretensions. I frequently tell the solicitor he will lose, for if he is accused by his own declaration, it is an act of kindness to warn him against an evil to come, neither can the information injure any one.

A stranger, who had the appearance of a gentleman, informed me, he had been extremely ill treated by another, who had wrongfully summoned him to the Court, and began to open his case.— I replied, if I was upon the Bench, I would wish to do him justice, though I could not attend to him here; but I should suppose, by his own account, he would lose the cause, and advised him to make up the matter. He still tried various arguments to unite my sentiments with his own, which not succeeding, he departed with marks of dissatisfaction.

At the trial it appeared that the gentleman had hired a horse of Horton, to Lichfield races. Upon his return, having stopt to regale with some company at Sutton, the sparkling bowl had so dazzled his eyes, he could not see which was his own horse; but, with difficulty, mounted another; which brought him home. This also belonged to the same person, but was hired to another; who, not

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finding

finding him in the stable, was left to *stagger* rather than *ride* to Birmingham, while the gentleman's remained at Sutton five days. He contended, that he had fulfilled his bargain, that as he had hired Horton's horse for one day, and brought Horton's horse home the same day, he had no right to pay for the other four.

Court. The bargain was, that *this horse* should be returned the same day, not another, consequently, the bargain was broken by you; he must therefore be under your care, and at your expence till his return. Whether you hire a horse or a house, you must pay while you keep it. To leave him at Sutton was no part of the contract; if you had a right to leave him there, you had a right to leave him any where else. The neglect did not originate from Horton, but from you, and one man cannot be responsible for the mistakes of another. We hope, however, you found more pleasure in the bowl, than you find regret in its consequences.

XCIV.

The forsaken Fair.

Should a case between two contentious people appear plain, it would be easy to pronounce upon it; no motive but justice should influence the Bench. But if a disputable case arises between a young fellow, as full of ill nature as a hag of seventy, and a beautiful girl, possessing the accomplishments of person, affability, dress, and modesty, it is easy to guess on which side the scale would incline. In the first instance, the judgment of a Commissioner is tied to an unalterable rule, but in the second, it expands to a more extensive latitude. There is a material difference between a declaration from mildness, and one from revenge; and still more between a fact *asserted* and *proved*.

There is not, in the whole creation, a more pleasing picture than a beautiful woman; none that will so much impress the beholder; even the man of sixty, who has no pretensions but to admire, steals a look with pleasure, and regrets the loss of twenty-five. Although features, figure,

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complexion,

complexion, and dress, are *four* leading powers to form a beauty, yet five are as necessary as her five senses. She is incomplete without a peculiar softness, easily discovered in the face, felt in the heart, but not easily described. Airs of pride dissipate the effects of beauty.

The Bench were surprized when a handsome young man, of genteel appearance, brought before them a young woman much handsomer, who seemed to merit the above description, and behaved to her with all the acrimony that revenge could dictate. The Commissioners soon perceived they had been lovers, but did not know the cause of their separation, and delicacy prevented the enquiry.

As a woman of this class stands upon slippery ground, the Bench were apprehensive of a declaration injurious to her honour; but from a collection of odd shillings he had only fabricated a debt of one pound six, which he pretended to have lent her at various times, during their intimacy, and demanded with violence, the assistance of the Bench to punish her.

They replied, that the *protection* of the fair, and not their punishment, should be his province; that

that he could not neglect superlative charms, nor suffer them to fall into the arms of another ; that a decision would avail nothing, for the quarrel of a lover, was only the quarrel of a day, which would disappear before any decision could take effect, when both parties would unite in laughing at the folly of the Commissioners. — But their surprize encreased when they were given to understand, that he had discarded her, and married another. This induced them silently to conclude, the wife might have poisoned his ear, as Eve did that of Adam.—The case seemed uncommon, for if revenge operates at all, it originates from the forsaken party.

She asserted, he had frequently treated her to places of amusement, but never on any account advanced her money. A witness to a conversation between them, declared, that he threatened her with a suit in this Court ; that he would swear to the debt, and if he could not recover it there, would pursue her through every court under the crown, till he could. That she answered, she owed him nothing, and if he swore to the debt, he would take a false oath ; but he replied, he would take twenty rather than miss his revenge.

The cause inclining against him, he boldly charged the Bench with injustice, asserting, they

had privately prejudged it before its appearance in public; insisted upon taking it out of Court, and carrying it to another, where he could have that justice denied him here; but the Court remarked,

As you voluntarily put the cause into our hands, it rests with us to dispose of it as we think right. Instead of a pre-judgment, we are not conscious that we ever saw either of you before. Whether any private transactions between you has inflamed your diabolical temper, and sunk you beneath a man, is also unknown to us, nor do we wish to enquire. But if the debt was just, on one side, and denied on the other, it could not merit the treatment you give. For many reasons, however, we think it spurious; she does not seem to stand in need of a twelve-penny boon; the evidence is much against you; but the principal is, whatever favours passed between you, were meant to be *given*, therefore, no change of sentiment, or of circumstance, can convert them into a debt.— We shall, for once, deliver the lamb from the lion, *dismiss the cause after full hearing*, which will forever muzzle your savage fangs; and, though you will not thank us, we shall preserve your property, and your reputation, from being lost in another Court.

XCV.

The Six Guinea Note.

I have somewhere met with this remark, "That one man does not differ so much from another, as he differs from himself." A mind cannot be deemed in its natural state, when it overflows with joy, fear, grief, revenge, or the powers are intoxicated with liquor. It will then grant more than is reasonable, and what it will afterwards repent of. In such cases a moderator becomes necessary. Through ecstasy of joy, Herod granted the head of John the Baptist; the oddest present ever made for dancing. One would have thought the heart of a young man more acceptable to a lady, than the head of an old one. Through fear, Charles I. granted that of Lord Strafford, whose greatest misfortune, and greatest crime, was his superior talents. Could a Court of Equity have stepped between the parties, it would have saved the heads of both. One powerful jug of ale induced Ralph Mountfort to assign his whole estate in trust, for his wife; she instantly turned

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him

him out of doors, he starved, as a pitiable wanderer, for thirty years, and no Court relieved him. He wanders still,

There is not a more flighty animal than the journeymen of Birmingham; he is as unsettled as a bubble, and as unmanageable as a balloon.— Many efforts have been tried to fix him, but all are abortive; the two fashionable modes of the present day are, to bind him by an article for a stated time, and allow him to get into the master's debt. He may object to the former, but never to the latter. A justice of peace presides over the article, and the Court of Conscience over the debt, but he often proves a match for both.

While *Cook* was an articulated servant to *Hands* and *Kacy*, he neglected their business a fortnight. They threatened him with a justice.— Frightened at punishment, he asked what he should give them to make the matter up? They replied, ten guineas. Six was agreed for, and he gave his note for that sum. Upon a second quarrel, he brought them to the Court for 1l. 19s. 11d. He pleaded the unreasonableness of the note; and they, that he was twenty-four shillings in their debt.

Court. A man's promissory note is always a strong evidence against him; it proves the act was his own. But though *value received* is expressed upon its face, matters may not always be as expressed; an untruth may be couched under the two simple words, which becomes a Court to examine. The note seems to be fabricated by threatening on one side, and fear on the other, without that value which it expresses. It is our province to disarm threatening of its terrors, set fear at liberty, and introduce equity.—The punishment surpasses the crime. We cannot do a journeyman button-maker the honour to suppose his time as valuable as that of a pleader at the bar, or a doctor of physic. We shall rescind the note as an enormous demand, grant the masters in its stead, two week's wages, one pound ten shillings for the time lost, and make an order against them for the sum demanded.

XCVI.

*He blows up a dreadful Flame; is scorches others,
but burns himself.*

Every man covets possessions; but for want of true judgment, seeks those of least value, and neglects those of greater. Appearances are mistaken for realities. There is nothing more valuable on this side the grave, than peace of mind; I will not except even that inestimable blessing health; for we frequently observe, the man in sickness possess more content than the man in health. Manors, titles, honours, money, never made one man happy; they are only the desirable gew-gaws of a day. They please in prospect, but never in possession; while a mind at peace, is a balance for every unfavourable contingency; it is proof against misfortune; the only soother in affliction; it can disarm poverty of its terrors, and support the man in distress. Content supplies every want, but creates none; "it even smoothes the bed of death." Solomon says, it is worth seeking, which is more than he says of money, and it will amply reward the seeker. Paul says, it surpasses understanding. Addison calls it the philosopher's

philosopher's stone, which, if it cannot convert every thing into gold, prevents every inordinate desire after it; and adds, if a man is not in some measure satisfied in his present station, he will be satisfied in none. Socrates calls it *natural wealth*. The man who holds content, instead of repining at what another possesses, looks back with pleasure upon what he possesses himself. If his condition is supposed bad, he may easily find one with whom he would not exchange it. Instead of regretting what he has not, he is pleased with what he has.—Another may abound, yet want; but he, with little, wants nothing. He is a stranger to envy. Content alone can set bounds to desire. Nothing tends so much to the prolongation of life, as a mind at rest; the rough passions being still, the vital current flows uninterrupted.

But, alas! notwithstanding this his substantial property, yet, it is of all others, the soonest lost. No treasure is easier fooled away. No property is less valued—it becomes the sport of a breath, a look, a word, a farthing, and obeys the command of the most trifling occurrence.

Should pride instigate thoughts prejudicial to happiness, wrench them from the heart, and stifle them by introducing more favourable objects. If
the

the sparks of turbulent passion begin to kindle, the philosophy of a moment may prevent the mischief of an hour; more evil may ensue from a mind ruffled about one shilling, than ten will repair.

A plaintiff attempting to exhibit his claim to the Court, the defendant burst forth with the look of a tyger, and the rage of a madman. His tone exceeded that of thunder, but was not quite so grand, and he seemed, like the tyger, ready to tear his antagonist to pieces.—The Commissioners supposing the case very singular, that could excite so much wrath, entreated him to be silent, till the plaintiff had made his demand, when he should have all the justice in their power; but they could no more be heard, than a whisper in a tempest. His violence continued without intermission, in spite of every intreaty or command, in which the plaintiff not only received the blackest abuse, but even the Commissioners were charged with being void of conscience. His wife begged to be heard, but the Court asked, if she was able to silence her husband? and remarked, that generally the husband could not silence the wife, or rather, durst not attempt it; but now the case was reversed. His fury not abating, the Commissioners were obliged to order

der him to prison, which had the desired effect, for he vanished in a breath; and now the plaintiff, and the wife, were left in serenity, to open to the Bench an important nothing.

The defendant having hired a horse off the plaintiff, which came to ten shillings, had paid him nine, but with-holding the tenth, the plaintiff had served him with a summons, upon which he paid the remaining shilling; but the plaintiff, instead of taking the cause out of Court, prosecuted his suit, for the charges.

Court. Those causes, like election votes, which are of the least consequence, are often the most noisy. We have seen two extremes meet in this; we never found a cause more turbulent, or less important. —The expence of a suit always follows the debt. But where no debt exists, no expence can follow, consequently this recoils upon the plaintiff. After the cause was entered in the Court books, he might have refused the shilling; it was no legal tender; but his accepting the debt, cuts off all claim. We must therefore dismiss the cause in favour of the furious defendant, who, for one dubious shilling, lost his temper and himself, and the expence must fall on the plaintiff.

XCVII.

The Rescue.

Although the cases which pass this Court are infinite, and cannot be described, yet I have admitted such a variety, that if the inquisitive reader, in search of a question, should not find one exactly in point, he will find something so like it, as to assist his future judgment. Equity may be known by the beautiful symmetry of her figure, and benignity of her aspect, though she may not always appear in the same dress.

Power, and the abuse of power, are as apt to unite in the same person, as pride and a tax-gatherer. In both cases, it is easy for any eye to see the union, but his own. Perhaps that man alone used his power mildly, who regrets, when over, that he did not use it milder. As no scheme can be conducted without order, and as order cannot be preserved without punishment, this last becomes as necessary to a distempered conduct, as physic to a distempered body; but both should be administered with caution; neither is there a necessity to distribute either, in public. Public punishments have hardened
many

'many a villain, but I question whether they ever cured one; why else are so many pockets picked at the gallows?

A young fellow having been sued for 11. 7s. and neglecting payment, an execution issued. The beadle seized him at a public house; but the company, eight or ten in number, being determined to rescue him, they beat the beadle, set the house-dog upon him, and though he could not bring away the man, brought away indelible marks of violence. Injured weakness will ever look up to power for redress, nor should it look in vain. Though the whole number might be culpable, yet, as some were more guilty than others, and, as all might not be perfectly known, he was advised to fix upon the most active, whom he knew well, and sue him for the debt. The hostler was the man.

At the trial the identity of the offender was fairly proved, both by the beadle and another, yet being opposed by the whole bevy, headed by an attorney, the beadle seemed in danger of a second attack. It was argued by the hostler, that he had contracted no debt, therefore the Court could have no power over him; that he would never pay

pay it, but if compulsive measures were adopted, would move a superior Court.

Court. To rescue a prisoner by violence is repugnant to order, and to law; it defeats every measure of government, introduces anarchy, and demands a speedy cure. Perhaps the remedy is to indict the offender in a court of law, but as this would be attended with an enormous expence which every man wishes to shun, and a loss of character to yourself, it would only encourage a growing evil. Except a concise remedy is applied none can avail. As in cases of rescue, under arrests, the sheriff can recover the debt from the offender, and as this Court is governed by the same rules, it is highly reasonable it should be recovered from you; we shall, though reluctantly, make an order against you. We will, however, comfort you with this council; when you have discharged the debt, you may either sue your brother culprits for their proportionate shares, or you may sue the young fellow for the whole.

XCVIII.

Receive Information, but judge for yourself.

In equity, as in divinity, when the doctrine is of moment, "there ought to be line upon line, and "precept upon precept." I have repeatedly solicited the Commissioner to examine the judgment of others, but chiefly rely upon his own; though both may be fallacious, yet, if he is attentive, it will generally be the least erroneous of the two; the reason of this difference is, the judgment of others often arises from interest; a motive of no weight with himself. The necessity of trusting to himself may be seen in the fifteenth case, where, between two lawyers, as between two fools, the Bench fell; also in the seventy-second, where the Commissioners, like a trumpet, sounded with the breath of the clerk; and again, in the eighty-seventh, where the Bench was led by an intoxicated beadle, as a blind man by a string. One remark, however, must never be forgotten, if the Commissioner depends upon his own judgment, he must be particularly careful that that judgment is right. If he is clear in this point, he may stand intrepid in the cause of justice, although, he should

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never

never be forgiven ; he will then rise superior even to the batteries of the law, and the cannibals of Northfield.

A breeches-maker sued Captain P—— for nine shillings, affirming he had sold a pair of breeches to one of his recruits for twelve ; that the Captain had promised payment out of the recruit's subsistence money ; and, as a proof of that promise, had paid him three shillings. The Captain utterly denied the promise being absolute ; and each party becoming violent, offered to support his assertion with an oath ; but as one of them must have been perjured, and as the Bench did not wish either to suffer, they would not administer one, nor use any means to inflame the wrath of two furious combatants, both accustomed to arm with pointed steel.

An attorney who appeared in defence of the Captain, observed, that a promise of payment *after* delivering the property, was not binding in law, therefore not valid.—But the Court replied, they should not try the cause by law, but by equity, and if a promise was given, consider it as binding, whether made before, at, or after the purchase.—Though we do not dispute the honour of the parties, yet, as a promise is asserted on one side, and

denied on the other, without proof on either, we must examine probabilities, and determine by our own judgment, without an oath. Perhaps the Captain might assure the breeches-maker, he would *endeavour* to stop the money, and as we are apt to interpret an expression as we wish to have it, the other might mistake this for an absolute promise; for the Captain well knows, it is contrary to the articles of war, to withhold a soldier's pay, therefore, was not likely to make it. Neither could he tell whether the recruit would pass examination at the regiment, which is another reason in his favour; besides, he is too well acquainted with the flimsy veracity of a recruit, to venture upon it a certain promise. His paying three shillings no way affects either side of the case. As a promise under these circumstances was not likely to be given, we shall decide for the Captain.

XCIX.

Betty John.

I have often introduced these cases with prefatory reflections analagous to the subject; but I shall introduce this last, with remarks, rather adapted to the *work* than the case.

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I have exhibited to view most of the features of this Court, which display peace and good will towards men. It composes differences with little trouble to itself, and a benefit to the contentious. If the peace-makers are blessed, those who introduced it, claim a share. I cannot recollect an instance where they ever heightened the flame of revenge—but many, where they extinguished it. The animosity of the winner subsides, but the wrath of the loser is sometimes transferred to the Bench. However, if the Commissioners endeavour to be informed, and pronounce to the best of their judgment, that animosity generally wears off. There are errors of judgment which a Court cannot avoid, and yet, a Court may be useful; for what hungry man would cast away the loaf because he finds in it a speck of dirt? If *one* suffers by the errors of the Bench, ninety-nine suffer by their own.

Its farther utility consists in being beneficial to commerce, for a man is more ready to sell his goods, because this Court will assist in the payment. It gives him a fairer prospect of his money than any other Court, for it gives him a debt he would no where else recover, and at less expence. It supplies the purchaser with necessaries in the time of want, who is more ready to *buy* than to pay.

It

It encourages industry, by allowing the debtor easy terms of payment, when another Court would dissolve his substance, and he would consider all as lost; for it frequently happens, in cases of distress, they charge the payment as low as two shillings a month, and give an additional time for the first, which ties the hands of the creditor for two years. A man will fly his country for a large sum, who would struggle through a small one,—This Court, by dividing a debt into many parts, brings it within the compass of the debtor; a heavy debt, above his power to reduce, like Æsop's bundle of sticks which none could break, when divided by the Court, may be singly reduced with ease.

It is curious to observe the different motives which influence the suitors, and how they operate in action. But it is just as curious to remark upon the Commissioners. As men, like the suitors, we have our weaknesses, and like them, bring those weaknesses to the Bench. Some have taken great umbrage when trifling debts were brought before them, have frowned upon the claimants, and “would determine none under half a crown.” But we may consider, trifling demands are founded in wrath as well as larger,

and may be attended with mischief. The powers of men are various ; be the stumbling block ever so small, if they cannot surmount it, we do well to remove it. Others, averse to gambling, have entered their protest against wagers ; but as these are the last, the most conclusive arguments in dispute, and accompanied with anger, it has long been a maxim with me, though I never laid a shilling in my whole life, to discountenance the wager, but end the contest. If a Commissioner is a dealer in coals, the coal debts that are brought before him, "ought to be discharged " with an expeditious payment, it is a necessary " article, and will not admit of delay." If he is possessed of fifty small houses, "of all payments, rent should be paid first, or how can " the landlord live, or discharge the taxes ?" If he keeps a shop of men, who spend that time in the alehouse which should be spent in his service, his whole artillery is levelled at the publican ; "he ought to be paid in small sums, and " the first postponed for a year." The cheesemonger, baker, and maltster contend, that time "ought not to be allowed for the necessities of " life:" and the mercer, "that clothing, of all " things, should be charged with the quickest " payments."

But

But if one debt ought to bear a speedier payment than another, it might be asked, whether we should not imitate our ministers, and charge this payment upon luxuries, as drinking, hair-dressing, horse-hire, &c? which a man might do without. But perhaps the Commissioner may as well rest satisfied if he can acquire two informations—The justice of the debt, and the ability of the debtor.

In every institution there are some general rules, which, like fundamental laws, should ever be kept in view. When these are observed, they methodize proceedings, facilitate business, the Court wears a fair and easy aspect, the suitors are preserved from injustice, and the Commissioners from disgrace. I shall take the liberty of introducing a few, under the name of

Maxims for the Bench.

1. Avoid hearing one party, except the other is by,
2. Beware of being biased by the first speaker,
3. Procure all the information possible from both, but lean to neither,

4. Assist *him* to regain his property, who has lost it.

5. Promote peace between contending parties,

6. If a fuitor has formerly offended in his private capacity, never carry resentment to the Bench.

7. Let the Commissioner, for a moment, suppose himself in the place of each of the opponents; this will often furnish him with the clue to justice.

8. Allow all necessary time to sift a case to the bottom; but when once master of the subject, close it, that time may be saved, and the repeated arguments of the parties cease.

9. Put an end to the contest, though the evidence is doubtful, if it can be done with a degree of justice, lest the angry parties tear each other to pieces in another court.

10. Give the loser a reason why he ought to lose, otherwise a decision will assume an arbitrary face.

11. Let every defendant pay the debt as soon as he conveniently can.

12. Though

12. Though the statute of limitations is necessary, yet as time pays no debts, let the weight of the Bench operate against him who pleads it.

13. Consider what consequences will attend a determination.

14. Power should never oppress ; let the Commissioner use his, which is great, for the benefit of every individual except himself.

But notwithstanding all his care, errors of judgment will attend him, as appears by the following case.

A plaintiff wished to sue a person in this Court, but not knowing whether the party was male or female, was at a loss by what name to begin. The defendant had been many years known in Birmingham, in the dress and character of a woman, called Elizabeth, and had been many years known in the dress and character of a man, who answered to the name of John. The plaintiff, after many fruitless enquiries, determined to trap the person, let the sex be what it would ; therefore filled up the summons with *Elizabeth, alias John Haywood*.

Whatever

Whatever was the gender, the animal appeared before the Court in a female habit, was rather elegant, of a moderate size, tolerably handsome, about thirty-two, had a firm countenance and manly step, no beard, eyes susceptible of love, a voice tending to the masculine, with manners engaging, and was rather sensible. A husband was pleaded in bar, and that the Court had no power over a wife. The trial continued three or four days, during which, the defendant acquired the appellation from the people of *Betty John*. The Court was uncommonly crowded. The women could have pulled its cap, and tossed it in a blanket, for verging upon their sex. The men listened with great attention. Expectation marked every face.—As it attended the Court in a female dress, I shall take the liberty of treating it with a feminine epithet.

It appeared from undoubted evidence, that while she dressed like a man, she was suspected to be a woman, but in both dresses was strongly suspected to be a man. The common opinion of the ignorant, who knew her, was, that she was an hermaphrodite, partaking of both sexes; an animal never yet known, notwithstanding Knighton, Grafton, &c. tell us, “ That in 1246, there was
“ a woman

“ a woman in the diocese of Lincoln, of noble
 “ birth, well favoured and beautiful, which was
 “ married to a rich man, and did bear him chil-
 “ dren ; she also got another gentlewoman with
 “ childe, and begate three sonnes of her, one
 “ after another, or ever it was knowen ; -their
 “ names were Havissia and Lucia.” But the
 age in which these ladies lived, was marked with
 credulity, every ear was open to wonder ; the
 cunning Miss Lucy, taking advantage of this
 weakness, might attempt to shelter her lover and
 her reputation under the petticoat.

While the defendant carried a male dress, she
 spent her evenings at the public with her male
 companions, and could, like them, swear with a
 tolerable grace, get drunk, smoak tobacco, kiss
 the girls, and now and then kick a bully. Though
 she pleaded being a wife, she had really been a
 husband ; for she courted a young woman, mar-
 ried her, and they lived together in wedlock, till
 the young woman died, which was some years
 after, and without issue. She afterwards, like the
 people of higher rank, kept a mistress, and ran
 away with her,

Forcible evidences, like these, were sufficient
 to convince the wisest head upon this Bench, or
 any

any other, that a man in disguise stood before them. Her wife living peaceably with her all her days, without one complaint of a breach of the marriage covenant, evinced there was no defect. Neither would a girl sacrifice her reputation, by becoming a mistress to a woman in breeches; this would be changing the substance for the shadow. Besides, a woman receives very little more pleasure in saluting a living woman, than a dead one; whereas a man, like the figure before the Bench, seemed to receive a pleasure inexpressible. Her being well versed in the art of kicking, farther proved she was a man, because it is an art never thoroughly understood by the beautiful part of the creation, nor has it been practised since the days of Queen Elizabeth.—Again, she spoke but little, which was no indication of her being a woman.

Under these masculine proofs, the Court, not convinced she was a wife, asked if she could produce any evidence of her being married? She answered in the affirmative. This evidence, the next court-day, only went to prove, that a man had lived with her in the capacity of a husband. But as instances might be produced of a man and woman cohabiting together, without being married, the plea was rejected. She was farther
asked,

asked, if she could bring a certificate of her marriage ? She would try.

The certificate, on a future day, was produced, but, like a Birmingham bill drawn without effects, it passed from hand to hand for inspection, but was returned with great indifference, without an acceptance. A scrap of paper, it was observed, containing a few simple words, might, like a gipsy's brat, be brought forth under any hedge, or drawn by a penny from a school-boy.

The Court, not satisfied she was a wife, and no farther evidence arising, entered an order against her.—On her neglecting payment, she was served with an execution, and committed to prison. Two days after, it appeared from incontestible proof, that she was a real woman, and a real wife ; that her husband then resided in Shropshire, and that she had nothing of the man about her higher than the feet.

The Commissioners, sensible of the injury done her, wished to make reparation ; but, alas ! their powers were extinct ; their determinations, like the events of fate, were unalterable. She cancelled the debt, by a confinement of forty days.

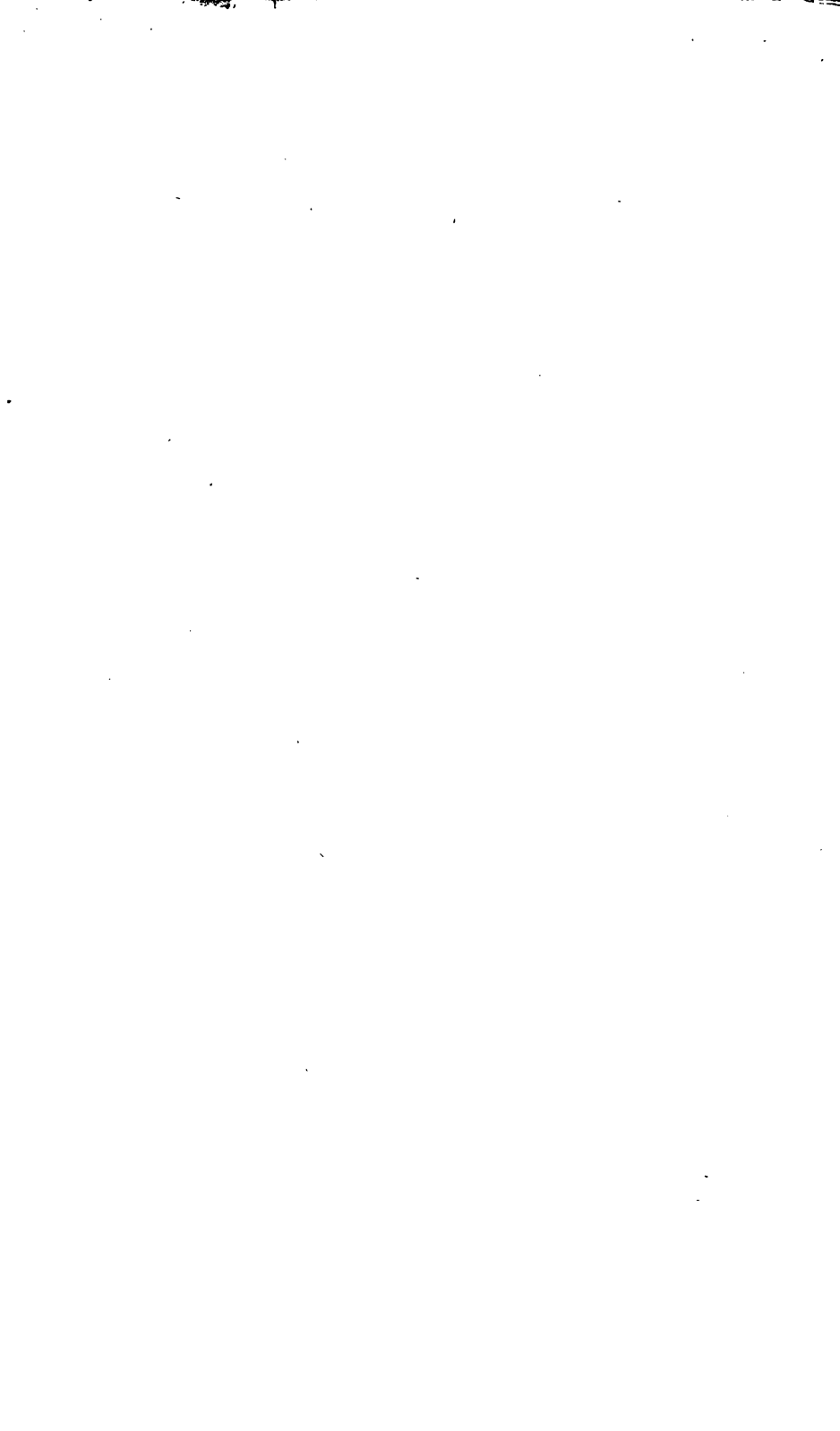
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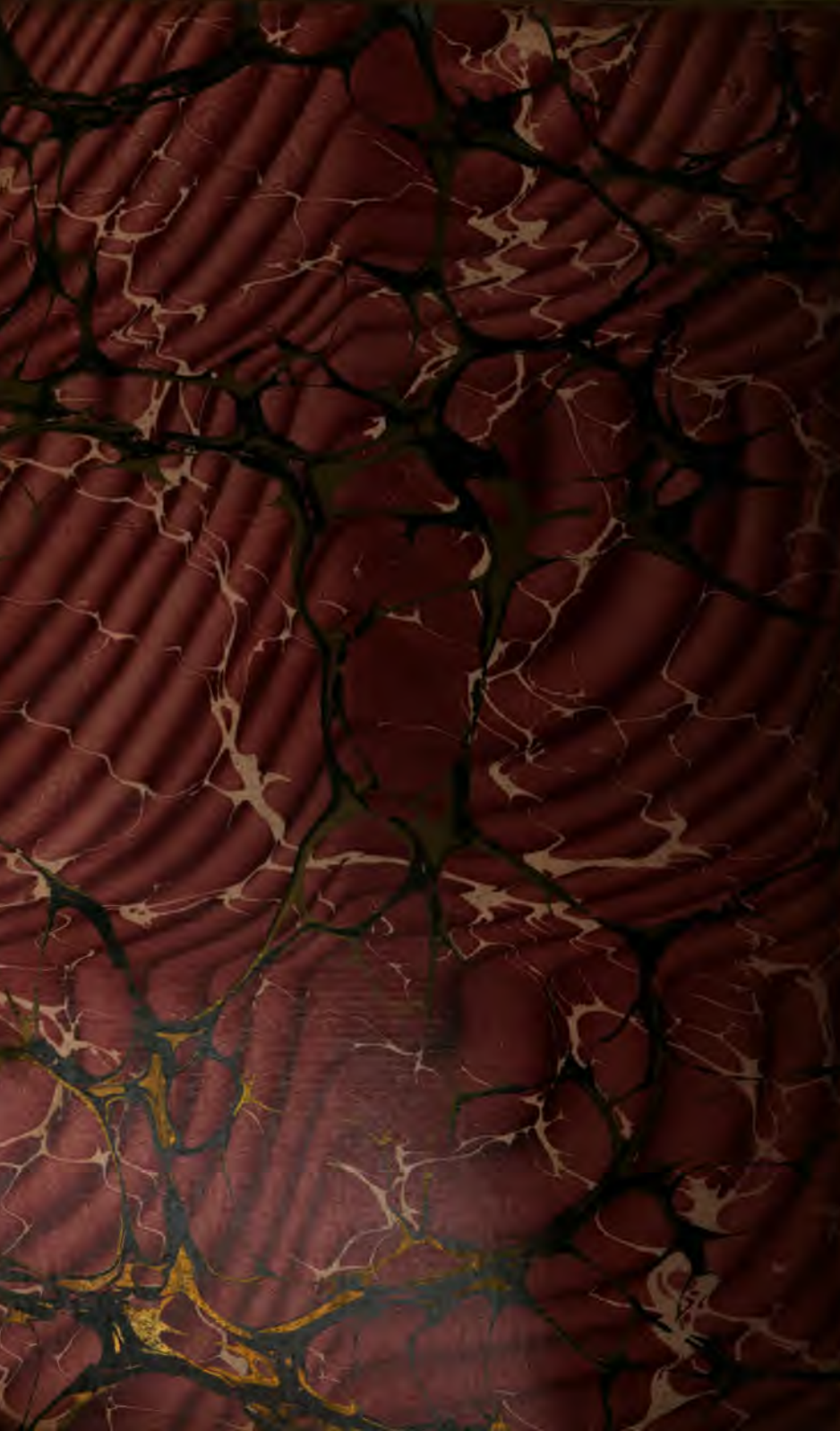
In the case before us, law and equity, which should ever be the same, militated against each other. The law would have acquitted the defendant, though she actually contracted the debt. It would have charged the husband with the payment, though he was wholly innocent.—Perhaps the error committed by the Bench was an error of right; they punished the guilty through mistake, who was acquitted by law, and acquitted the innocent, whom the law would have found guilty.

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